

INDEPENDENT REVIEW PROCESS

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

AMAZON EU S.À R.L., ) ICDR CASE NO. 01-16-0000-7056  
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 Claimant, )  
 )  
 and )  
 )  
 INTERNET CORPORATION FOR ASSIGNED )  
 NAMES AND NUMBERS, )  
 )  
 Respondent. )  
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**INDEX TO DOCUMENTS SUBMITTED**  
**WITH WITNESS STATEMENT OF AKRAM ATALLAH AND**  
**RESPONSE TO CLAIMANT’S REQUEST FOR INDEPENDENT REVIEW PROCESS**

<b><u>Respondent Exhibit</u></b>		<b><u>DESCRIPTION</u></b>
<b>R-1</b>	11 Feb. 2016	ICANN Bylaws (as amended 11 February 2016).
<b>R-2</b>	Oct. 2011	GAC Operating Principles (as amended at GAC Dakar meeting in October, 2011).
<b>R-3</b>	11 Sept. 2007	Final Report to the Board on the Introduction of Generic New Top-Level Domains, dated 11 September 2007.
<b>R-4</b>	24 Oct. 2008	New gTLD Application Guidebook (24 October 2008 version).
<b>R-5</b>	21 Feb. 2011	ICANN Board-GAC Consultation: Objection Procedures, Sensitive Strings, Early Warning, dated 21 February 2011.
<b>R-6</b>	23 Feb. 2011	GAC indicative scorecard on new gTLD outstanding issues listed in the GAC Cartagena Communiqué.

<b><u>Respondent Exhibit</u></b>		<b><u>DESCRIPTION</u></b>
<b>R-7</b>	15 April 2011	New gTLD Program Explanatory Memorandum: GAC and Government Objections; Handling of Sensitive Strings; Early Warnings, dated 15 April 2011.
<b>R-8</b>	Undated	Revised ICANN Notes on: the GAC New gTLDs Scorecard, and GAC Comments to Board Response.
<b>R-9</b>	15 April 2011	New gTLD Applicant Guidebook (15 April 2011 version).
<b>R-10</b>	15 April 2011	GAC comments on the Guidebook (15 April 2011 version).
<b>R-11</b>	30 May 2011	New gTLD Applicant Guidebook (30 May 2011 version).
<b>R-12</b>	18 June 2011	Letter from Ms. Heather Dryden to Mr. Peter Dengate Thrush, dated 18 June 2011.
<b>R-13</b>	19 June 2011	Transcript of ICANN New gTLDs and Applicant Guidebook Meeting with Board/GAC, dated 19 June 2011.
<b>R-14</b>	20 June 2011	Singapore Approved Board Resolutions, dated 20 June 2011.
<b>R-15</b>	27 Oct. 2011	GAC Dakar Communiqué, dated 27 October 2011.
<b>R-16</b>	Undated	Summary of Changes to Applicant Guidebook (showing changes from version 2011-09-19 to 2012-01-11).
<b>R-17</b>	11 April 2012	Board Resolutions 2012.04.10.01-2012.04.10.04.
<b>R-18</b>	22 Oct. 2015	Board Resolutions 2015.10.22.15 and 2015.10.22.16.
<b>R-19</b>	11 April 2013	GAC Beijing Communiqué, dated 11 April 2013.
<b>R-20</b>	4 June 2013	ANNEX 1 to NGPC Resolution No. 2013.06.04.NG01.
<b>R-21</b>	4 June 2013	NGPC Rationale for Resolution 2013.06.04.NG01, dated 4 June 2013.
<b>R-22</b>	18 July 2013	GAC Communiqué – Durban, South Africa, dated 18 July 2013.

<b><u>Respondent Exhibit</u></b>		<b><u>DESCRIPTION</u></b>
<b>R-23</b>	23 Aug. 2013	Amazon's GAC Advice Response Form for Applicants, dated 23 August 2013.
<b>R-24</b>	5 Feb. 2014	ANNEX 1 to ICANN NGPC Resolution No. 2014.02.05.NG01: GAC Advice (Beijing, Durban, Buenos Aires): Actions and Updates.
<b>R-25</b>	4 April 2014	Amazon's Response to M. Passa's Expert Report on .AMAZON.
<b>R-26</b>	10 Sept. 2013	Minutes of the New gTLD Program Committee Meeting of 10 September 2013.
<b>R-27</b>	28 Sept. 2013	Minutes of the New gTLD Program Committee Meeting of 28 September 2013.
<b>R-28</b>	9 Jan. 2014	Minutes of the New gTLD Program Committee Meeting of 9 January 2014.
<b>R-29</b>	5 Feb. 2014	Minutes of the New gTLD Program Committee Meeting of 5 February 2014.
<b>R-30</b>	22 Mar. 2014	Minutes of the New gTLD Program Committee Meeting of 22 March 2014.
<b>R-31</b>	29 April 2014	Minutes of the New gTLD Program Committee Meeting of 29 April 2014.
<b>R-32</b>	10 June 1998	Statement of Policy on Management of Internet Names and Addresses, 63 Fed. Reg. 31741, June 10, 1998.
<b>R-33</b>	8 Aug. 2007	GNSO Final Report on Introduction of New Generic Top-Level Domains, 8 August 2007.
<b>R-34</b>	28 Mar. 2007	GAC Principles Regarding New gTLDs, 28 March 2007.
<b>R-35</b>	26 June 2008	Board Resolutions 2008.06.26.02, 2008.06.26.03.
<b>R-36</b>	12 Mar. 2013	Objection of the Independent Objector to .AMAZON (Application ID: 1-1315-58086)
<b>R-37</b>	8 Sept. 2014	Minutes of the New gTLD Program Committee Meeting of 8 September 2014.

<b><u>Respondent Exhibit</u></b>		<b><u>DESCRIPTION</u></b>
<b>R-38</b>	8 Dec. 2011	Board Resolution Number: 2011.12.08.19

R-1

RESPONDENT'S EXHIBIT

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MEDIA

POLICY

PUBLIC  
COMMENT

RESOURCES

COMMUNITY

IANA  
STEWARDSHIP  
& ACCOUNTABILITY

## Resources

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

As amended 11 February 2016

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## ARTICLE I: MISSION AND CORE VALUES

### Section 1. MISSION

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

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

### Section 2. CORE VALUES

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

1. Preserving and enhancing the operational stability, reliability, security, and global interoperability of the Internet.
2. Respecting the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN's activities to those matters within ICANN's mission requiring or significantly benefiting from global coordination.
3. To the extent feasible and appropriate, delegating coordination functions to or recognizing the policy role of other responsible entities that reflect the interests of affected parties.
4. Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making.
5. Where feasible and appropriate, depending on market mechanisms to

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- Groups

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Business

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- Contractual Compliance

- 
- Registrars

- 
- Registries

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Operational Metrics

- 
- Identifier Systems Security, Stability and Resiliency (IS-SSR)

- 
- ccTLDs

- 
- Internationalized Domain Names

- 
- Universal Acceptance Initiative
-

Policy Public Comment Technical  
Functions Contact Help

promote and sustain a competitive environment.

6. Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest.
7. Employing open and transparent policy development mechanisms that (i) promote well-informed decisions based on expert advice, and (ii) ensure that those entities most affected can assist in the policy development process.
8. Making decisions by applying documented policies neutrally and objectively, with integrity and fairness.
9. Acting with a speed that is responsive to the needs of the Internet while, as part of the decision-making process, obtaining informed input from those entities most affected.
10. Remaining accountable to the Internet community through mechanisms that enhance ICANN's effectiveness.
11. While remaining rooted in the private sector, recognizing that governments and public authorities are responsible for public policy and duly taking into account governments' or public authorities' recommendations.

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

## ARTICLE II: POWERS

### Section 1. GENERAL POWERS

Except as otherwise provided in the Articles of Incorporation or these Bylaws, the powers of ICANN shall be exercised by, and its property controlled and its business and affairs conducted by or under the direction of, the Board. With respect to any matters that would fall within the provisions of [Article III](#),

[Section 6](#), the Board may act only by a majority vote of all members of the Board. In all other matters, except as otherwise provided in these Bylaws or by law, the Board may act by majority vote of those present at any annual, regular, or special meeting of the Board. Any references in these Bylaws to a vote of the Board shall mean the vote of only those members present at the meeting where a quorum is present unless otherwise specifically provided in these Bylaws by reference to "all of the members of the Board."

## **Section 2. RESTRICTIONS**

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

## **Section 3. NON-DISCRIMINATORY TREATMENT**

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

# ARTICLE III: TRANSPARENCY

## **Section 1. PURPOSE**

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

## **Section 2. WEBSITE**

[ICANN](#) shall maintain a publicly-accessible Internet World Wide Web site (the "Website"), which may include, among other things, (i) a calendar of scheduled meetings of the Board, [Supporting Organizations](#), and [Advisory Committees](#); (ii) a docket of all pending policy development matters, including their schedule and current status; (iii) specific meeting notices and agendas as described below; (iv) information on [ICANN's](#) budget, annual audit, financial contributors and the amount of their contributions, and related matters; (v) information about the availability of accountability mechanisms, including reconsideration, independent review, and Ombudsman activities, as well as information about the outcome of specific requests and complaints invoking these mechanisms; (vi) announcements about [ICANN](#) activities of

interest to significant segments of the ICANN community; (vii) comments received from the community on policies being developed and other matters; (viii) information about ICANN's physical meetings and public forums; and (ix) other information of interest to the ICANN community.

### **Section 3. MANAGER OF PUBLIC PARTICIPATION**

There shall be a staff position designated as Manager of Public Participation, or such other title as shall be determined by the President, that shall be responsible, under the direction of the President, for coordinating the various aspects of public participation in ICANN, including the Website and various other means of communicating with and receiving input from the general community of Internet users.

### **Section 4. MEETING NOTICES AND AGENDAS**

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

### **Section 5. MINUTES AND PRELIMINARY REPORTS**

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

conclusion of each meeting (as calculated by local time at the location of ICANN's principal office), any actions taken by the Board shall be made publicly available in a preliminary report on the Website, subject to the limitations on disclosure set forth in Section 5.2 above. For any matters that the Board determines not to disclose, the Board shall describe in general terms in the relevant preliminary report the reason for such nondisclosure.

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

#### **Section 6. NOTICE AND COMMENT ON POLICY ACTIONS**

1. With respect to any policies that are being considered by the Board for adoption that substantially affect the operation of the Internet or third parties, including the imposition of any fees or charges, ICANN shall:
  - a. provide public notice on the Website explaining what policies are being considered for adoption and why, at least twenty-one days (and if practical, earlier) prior to any action by the Board;
  - b. provide a reasonable opportunity for parties to comment on the adoption of the proposed policies, to see the comments of others, and to reply to those comments, prior to any action by the Board; and
  - c. in those cases where the policy action affects public policy concerns, to request the opinion of the Governmental Advisory Committee and take duly into account any advice timely presented by the Governmental Advisory Committee on its own initiative or at the Board's request.
2. Where both practically feasible and consistent with the relevant policy

development process, an in-person public forum shall also be held for discussion of any proposed policies as described in [Section 6\(1\)\(b\) of this Article](#), prior to any final Board action.

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

## **Section 7. TRANSLATION OF DOCUMENTS**

As appropriate and to the extent provided in the ICANN budget, ICANN shall facilitate the translation of final published documents into various appropriate languages.

## **ARTICLE IV: ACCOUNTABILITY AND REVIEW**

### **Section 1. PURPOSE**

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

### **Section 2. RECONSIDERATION**

1. ICANN shall have in place a process by which any person or entity materially affected by an action of ICANN may request review or reconsideration of that action by the Board.
2. Any person or entity may submit a request for reconsideration or review of an ICANN action or inaction ("Reconsideration Request") to the extent that he, she, or it have been adversely affected by:
  - a. one or more staff actions or inactions that contradict established ICANN policy(ies); or
  - b. one or more actions or inactions of the ICANN Board that have been taken or refused to be taken without consideration of material information, except where the party submitting the request could have submitted, but did not submit, the

- information for the Board's consideration at the time of action or refusal to act; or
- c. one or more actions or inactions of the ICANN Board that are taken as a result of the Board's reliance on false or inaccurate material information.
3. The Board has designated the Board Governance Committee to review and consider any such Reconsideration Requests. The Board Governance Committee shall have the authority to:
- a. evaluate requests for review or reconsideration;
  - b. summarily dismiss insufficient requests;
  - c. evaluate requests for urgent consideration;
  - d. conduct whatever factual investigation is deemed appropriate;
  - e. request additional written submissions from the affected party, or from other parties;
  - f. make a final determination on Reconsideration Requests regarding staff action or inaction, without reference to the Board of Directors; and
  - g. make a recommendation to the Board of Directors on the merits of the request, as necessary.
4. ICANN shall absorb the normal administrative costs of the reconsideration process. It reserves the right to recover from a party requesting review or reconsideration any costs that are deemed to be extraordinary in nature. When such extraordinary costs can be foreseen, that fact and the reasons why such costs are necessary and appropriate to evaluating the Reconsideration Request shall be communicated to the party seeking reconsideration, who shall then have the option of withdrawing the request or agreeing to bear such costs.
5. All Reconsideration Requests must be submitted to an e-mail address designated by the Board Governance Committee within fifteen days after:
- a. for requests challenging Board actions, the date on which information about the challenged Board action is first published in a resolution, unless the posting of the resolution is not accompanied by a rationale. In that instance, the request must be submitted within 15 days from the initial posting of the rationale; or

- b. for requests challenging staff actions, the date on which the party submitting the request became aware of, or reasonably should have become aware of, the challenged staff action; or
  - c. for requests challenging either Board or staff inaction, the date on which the affected person reasonably concluded, or reasonably should have concluded, that action would not be taken in a timely manner.
6. To properly initiate a Reconsideration process, all requestors must review and follow the Reconsideration Request form posted on the ICANN website. at <http://www.icann.org/en/groups/board/governance/reconsideration>. Requestors must also acknowledge and agree to the terms and conditions set forth in the form when filing.
  7. Requestors shall not provide more than 25 pages (double-spaced, 12-point font) of argument in support of a Reconsideration Request. Requestors may submit all documentary evidence necessary to demonstrate why the action or inaction should be reconsidered, without limitation.
  8. The Board Governance Committee shall have authority to consider Reconsideration Requests from different parties in the same proceeding so long as: (i) the requests involve the same general action or inaction; and (ii) the parties submitting Reconsideration Requests are similarly affected by such action or inaction. In addition, consolidated filings may be appropriate if the alleged causal connection and the resulting harm is the same for all of the requestors. Every requestor must be able to demonstrate that it has been materially harmed and adversely impacted by the action or inaction giving rise to the request.
  9. The Board Governance Committee shall review each Reconsideration Request upon its receipt to determine if it is sufficiently stated. The Board Governance Committee may summarily dismiss a Reconsideration Request if: (i) the requestor fails to meet the requirements for bringing a Reconsideration Request; (ii) it is frivolous, querulous or vexatious; or (iii) the requestor had notice and opportunity to, but did not, participate in the public comment period relating to the contested action, if applicable. The Board Governance Committee's summary dismissal of a Reconsideration Request shall be posted on the Website.
  10. For all Reconsideration Requests that are not summarily dismissed, the

Board Governance Committee shall promptly proceed to review and consideration.

11. The Board Governance Committee may ask the ICANN staff for its views on the matter, which comments shall be made publicly available on the Website.
12. The Board Governance Committee may request additional information or clarifications from the requestor, and may elect to conduct a meeting with the requestor by telephone, email or, if acceptable to the party requesting reconsideration, in person. A requestor may ask for an opportunity to be heard; the Board Governance Committee's decision on any such request is final. To the extent any information gathered in such a meeting is relevant to any recommendation by the Board Governance Committee, it shall so state in its recommendation.
13. The Board Governance Committee may also request information relevant to the request from third parties. To the extent any information gathered is relevant to any recommendation by the Board Governance Committee, it shall so state in its recommendation. Any information collected from third parties shall be provided to the requestor.
14. The Board Governance Committee shall act on a Reconsideration Request on the basis of the public written record, including information submitted by the party seeking reconsideration or review, by the ICANN staff, and by any third party.
15. For all Reconsideration Requests brought regarding staff action or inaction, the Board Governance Committee shall be delegated the authority by the Board of Directors to make a final determination and recommendation on the matter. Board consideration of the recommendation is not required. As the Board Governance Committee deems necessary, it may make recommendation to the Board for consideration and action. The Board Governance Committee's determination on staff action or inaction shall be posted on the Website. The Board Governance Committee's determination is final and establishes precedential value.
16. The Board Governance Committee shall make a final determination or a recommendation to the Board with respect to a Reconsideration Request within thirty days following its receipt of the request, unless impractical, in which case it shall report to the Board the circumstances that prevented it from making a final recommendation and its best estimate of the time required to produce such a final determination or recommendation. The final recommendation shall be posted on ICANN's website.

17. The Board shall not be bound to follow the recommendations of the Board Governance Committee. The final decision of the Board shall be made public as part of the preliminary report and minutes of the Board meeting at which action is taken. The Board shall issue its decision on the recommendation of the Board Governance Committee within 60 days of receipt of the Reconsideration Request or as soon thereafter as feasible. Any circumstances that delay the Board from acting within this timeframe must be identified and posted on ICANN's website. The Board's decision on the recommendation is final.
18. If the requestor believes that the Board action or inaction posed for Reconsideration is so urgent that the timing requirements of the Reconsideration process are too long, the requestor may apply to the Board Governance Committee for urgent consideration. Any request for urgent consideration must be made within two business days (calculated at ICANN's headquarters in Los Angeles, California) of the posting of the resolution at issue. A request for urgent consideration must include a discussion of why the matter is urgent for reconsideration and must demonstrate a likelihood of success with the Reconsideration Request.
19. The Board Governance Committee shall respond to the request for urgent consideration within two business days after receipt of such request. If the Board Governance Committee agrees to consider the matter with urgency, it will cause notice to be provided to the requestor, who will have two business days after notification to complete the Reconsideration Request. The Board Governance Committee shall issue a recommendation on the urgent Reconsideration Request within seven days of the completion of the filing of the Request, or as soon thereafter as feasible. If the Board Governance Committee does not agree to consider the matter with urgency, the requestor may still file a Reconsideration Request within the regular time frame set forth within these Bylaws.
20. The Board Governance Committee shall submit a report to the Board on an annual basis containing at least the following information for the preceding calendar year:
  - a. the number and general nature of Reconsideration Requests received, including an identification if the requests were acted upon, summarily dismissed, or remain pending;
  - b. for any Reconsideration Requests that remained pending at the end of the calendar year, the average length of time for which such Reconsideration Requests have been pending, and a description of the reasons for any request pending for more

- than ninety (90) days;
- c. an explanation of any other mechanisms available to ensure that ICANN is accountable to persons materially affected by its decisions; and
  - d. whether or not, in the Board Governance Committee's view, the criteria for which reconsideration may be requested should be revised, or another process should be adopted or modified, to ensure that all persons materially affected by ICANN decisions have meaningful access to a review process that ensures fairness while limiting frivolous claims.

### **Section 3. INDEPENDENT REVIEW OF BOARD ACTIONS**

1. In addition to the reconsideration process described in [Section 2 of this Article](#), ICANN shall have in place a separate process for independent third-party review of Board actions alleged by an affected party to be inconsistent with the Articles of Incorporation or Bylaws.
2. Any person materially affected by a decision or action by the Board that he or she asserts is inconsistent with the Articles of Incorporation or Bylaws may submit a request for independent review of that decision or action. In order to be materially affected, the person must suffer injury or harm that is directly and causally connected to the Board's alleged violation of the Bylaws or the Articles of Incorporation, and not as a result of third parties acting in line with the Board's action.
3. A request for independent review must be filed within thirty days of the posting of the minutes of the Board meeting (and the accompanying Board Briefing Materials, if available) that the requesting party contends demonstrates that ICANN violated its Bylaws or Articles of Incorporation. Consolidated requests may be appropriate when the causal connection between the circumstances of the requests and the harm is the same for each of the requesting parties.
4. Requests for such independent review shall be referred to an Independent Review Process Panel ("IRP Panel"), which shall be charged with comparing contested actions of the Board to the Articles of Incorporation and Bylaws, and with declaring whether the Board has acted consistently with the provisions of those Articles of Incorporation and Bylaws. The IRP Panel must apply a defined standard of review to the IRP request, focusing on:
  - a. did the Board act without conflict of interest in taking its decision?;

- b. did the Board exercise due diligence and care in having a reasonable amount of facts in front of them?; and
  - c. did the Board members exercise independent judgment in taking the decision, believed to be in the best interests of the company?
- 5. Requests for independent review shall not exceed 25 pages (double-spaced, 12-point font) of argument. ICANN's response shall not exceed that same length. Parties may submit documentary evidence supporting their positions without limitation. In the event that parties submit expert evidence, such evidence must be provided in writing and there will be a right of reply to the expert evidence.
- 6. There shall be an omnibus standing panel of between six and nine members with a variety of expertise, including jurisprudence, judicial experience, alternative dispute resolution and knowledge of ICANN's mission and work from which each specific IRP Panel shall be selected. The panelists shall serve for terms that are staggered to allow for continued review of the size of the panel and the range of expertise. A Chair of the standing panel shall be appointed for a term not to exceed three years. Individuals holding an official position or office within the ICANN structure are not eligible to serve on the standing panel. In the event that an omnibus standing panel: (i) is not in place when an IRP Panel must be convened for a given proceeding, the IRP proceeding will be considered by a one- or three-member panel comprised in accordance with the rules of the IRP Provider; or (ii) is in place but does not have the requisite diversity of skill and experience needed for a particular proceeding, the IRP Provider shall identify one or more panelists, as required, from outside the omnibus standing panel to augment the panel members for that proceeding.
- 7. All IRP proceedings shall be administered by an international dispute resolution provider appointed from time to time by ICANN ("the IRP Provider"). The membership of the standing panel shall be coordinated by the IRP Provider subject to approval by ICANN.
- 8. Subject to the approval of the Board, the IRP Provider shall establish operating rules and procedures, which shall implement and be consistent with this [Section 3](#).
- 9. Either party may request that the IRP be considered by a one- or three-member panel; the Chair of the standing panel shall make the final determination of the size of each IRP panel, taking into account the wishes of the parties and the complexity of the issues presented.

10. The IRP Provider shall determine a procedure for assigning members from the standing panel to individual IRP panels.
11. The IRP Panel shall have the authority to:
  - a. summarily dismiss requests brought without standing, lacking in substance, or that are frivolous or vexatious;
  - b. request additional written submissions from the party seeking review, the Board, the Supporting Organizations, or from other parties;
  - c. declare whether an action or inaction of the Board was inconsistent with the Articles of Incorporation or Bylaws; and
  - d. recommend that the Board stay any action or decision, or that the Board take any interim action, until such time as the Board reviews and acts upon the opinion of the IRP;
  - e. consolidate requests for independent review if the facts and circumstances are sufficiently similar; and
  - f. determine the timing for each proceeding.
12. In order to keep the costs and burdens of independent review as low as possible, the IRP Panel should conduct its proceedings by email and otherwise via the Internet to the maximum extent feasible. Where necessary, the IRP Panel may hold meetings by telephone. In the unlikely event that a telephonic or in-person hearing is convened, the hearing shall be limited to argument only; all evidence, including witness statements, must be submitted in writing in advance.
13. All panel members shall adhere to conflicts-of-interest policy stated in the IRP Provider's operating rules and procedures, as approved by the Board.
14. Prior to initiating a request for independent review, the complainant is urged to enter into a period of cooperative engagement with ICANN for the purpose of resolving or narrowing the issues that are contemplated to be brought to the IRP. The cooperative engagement process is published on ICANN.org and is incorporated into this Section 3 of the Bylaws.
15. Upon the filing of a request for an independent review, the parties are urged to participate in a conciliation period for the purpose of narrowing the issues that are stated within the request for independent review. A conciliator will be appointed from the members of the omnibus standing panel by the Chair of that panel. The conciliator shall

not be eligible to serve as one of the panelists presiding over that particular IRP. The Chair of the standing panel may deem conciliation unnecessary if cooperative engagement sufficiently narrowed the issues remaining in the independent review.

16. Cooperative engagement and conciliation are both voluntary. However, if the party requesting the independent review does not participate in good faith in the cooperative engagement and the conciliation processes, if applicable, and ICANN is the prevailing party in the request for independent review, the IRP Panel must award to ICANN all reasonable fees and costs incurred by ICANN in the proceeding, including legal fees.
17. All matters discussed during the cooperative engagement and conciliation phases are to remain confidential and not subject to discovery or as evidence for any purpose within the IRP, and are without prejudice to either party.
18. The IRP Panel should strive to issue its written declaration no later than six months after the filing of the request for independent review. The IRP Panel shall make its declaration based solely on the documentation, supporting materials, and arguments submitted by the parties, and in its declaration shall specifically designate the prevailing party. The party not prevailing shall ordinarily be responsible for bearing all costs of the IRP Provider, but in an extraordinary case the IRP Panel may in its declaration allocate up to half of the costs of the IRP Provider to the prevailing party based upon the circumstances, including a consideration of the reasonableness of the parties' positions and their contribution to the public interest. Each party to the IRP proceedings shall bear its own expenses.
19. The IRP operating procedures, and all petitions, claims, and declarations, shall be posted on ICANN's website when they become available.
20. The IRP Panel may, in its discretion, grant a party's request to keep certain information confidential, such as trade secrets.
21. Where feasible, the Board shall consider the IRP Panel declaration at the Board's next meeting. The declarations of the IRP Panel, and the Board's subsequent action on those declarations, are final and have precedential value.

#### **Section 4. PERIODIC REVIEW OF ICANN STRUCTURE AND OPERATIONS**

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

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

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

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

## ARTICLE V: OMBUDSMAN

### Section 1. OFFICE OF OMBUDSMAN

1. There shall be an Office of Ombudsman, to be managed by an Ombudsman and to include such staff support as the Board determines is appropriate and feasible. The Ombudsman shall be a full-time position, with salary and benefits appropriate to the function, as determined by the Board.
2. The Ombudsman shall be appointed by the Board for an initial term of two years, subject to renewal by the Board.
3. The Ombudsman shall be subject to dismissal by the Board only upon a three-fourths (3/4) vote of the entire Board.
4. The annual budget for the Office of Ombudsman shall be established by the Board as part of the annual ICANN budget process. The Ombudsman shall submit a proposed budget to the President, and the President shall include that budget submission in its entirety and

without change in the general ICANN budget recommended by the ICANN President to the Board. Nothing in this Article shall prevent the President from offering separate views on the substance, size, or other features of the Ombudsman's proposed budget to the Board.

## **Section 2. CHARTER**

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

## **Section 3. OPERATIONS**

The Office of Ombudsman shall:

1. facilitate the fair, impartial, and timely resolution of problems and complaints that affected members of the ICANN community (excluding employees and vendors/suppliers of ICANN) may have with specific actions or failures to act by the Board or ICANN staff which have not otherwise become the subject of either the Reconsideration or Independent Review Policies;
2. exercise discretion to accept or decline to act on a complaint or question, including by the development of procedures to dispose of complaints that are insufficiently concrete, substantive, or related to ICANN's interactions with the community so as to be inappropriate subject matters for the Ombudsman to act on. In addition, and without limiting the foregoing, the Ombudsman shall have no authority to act in any way with respect to internal administrative matters, personnel matters, issues relating to membership on the Board, or issues related to vendor/supplier relations;
3. have the right to have access to (but not to publish if otherwise confidential) all necessary information and records from ICANN staff and constituent bodies to enable an informed evaluation of the complaint and to assist in dispute resolution where feasible (subject

only to such confidentiality obligations as are imposed by the complainant or any generally applicable confidentiality policies adopted by ICANN);

4. heighten awareness of the Ombudsman program and functions through routine interaction with the ICANN community and online availability;
5. maintain neutrality and independence, and have no bias or personal stake in an outcome; and
6. comply with all ICANN conflicts-of-interest and confidentiality policies.

#### **Section 4. INTERACTION WITH ICANN AND OUTSIDE ENTITIES**

1. No ICANN employee, Board member, or other participant in Supporting Organizations or Advisory Committees shall prevent or impede the Ombudsman's contact with the ICANN community (including employees of ICANN). ICANN employees and Board members shall direct members of the ICANN community who voice problems, concerns, or complaints about ICANN to the Ombudsman, who shall advise complainants about the various options available for review of such problems, concerns, or complaints.
2. ICANN staff and other ICANN participants shall observe and respect determinations made by the Office of Ombudsman concerning confidentiality of any complaints received by that Office.
3. Contact with the Ombudsman shall not constitute notice to ICANN of any particular action or cause of action.
4. The Ombudsman shall be specifically authorized to make such reports to the Board as he or she deems appropriate with respect to any particular matter and its resolution or the inability to resolve it. Absent a determination by the Ombudsman, in his or her sole discretion, that it would be inappropriate, such reports shall be posted on the Website.
5. The Ombudsman shall not take any actions not authorized in these Bylaws, and in particular shall not institute, join, or support in any way any legal actions challenging ICANN structure, procedures, processes, or any conduct by the ICANN Board, staff, or constituent bodies.

#### **Section 5. ANNUAL REPORT**

The Office of Ombudsman shall publish on an annual basis a consolidated analysis of the year's complaints and resolutions, appropriately dealing with confidentiality obligations and concerns. Such annual report should include a description of any trends or common elements of complaints received during

the period in question, as well as recommendations for steps that could be taken to minimize future complaints. The annual report shall be posted on the Website.

## ARTICLE VI: BOARD OF DIRECTORS

### Section 1. COMPOSITION OF THE BOARD

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

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

1. The Directors shall consist of:
  - a. Eight voting members selected by the Nominating Committee established by [Article VII of these Bylaws](#). These seats on the Board of Directors are referred to in these Bylaws as Seats 1 through 8.
  - b. Two voting members selected by the [Address Supporting Organization](#) according to the provisions of [Article VIII of these Bylaws](#). These seats on the Board of Directors are referred to in these Bylaws as Seat 9 and Seat 10.
  - c. Two voting members selected by the [Country-Code Names Supporting Organization](#) according to the provisions of [Article IX of these Bylaws](#). These seats on the Board of Directors are referred to in these Bylaws as Seat 11 and Seat 12.
  - d. Two voting members selected by the [Generic Names Supporting Organization](#) according to the provisions of [Article X of these Bylaws](#). These seats on the Board of Directors are referred to in these Bylaws as Seat 13 and Seat 14.
  - e. One voting member selected by the At-Large Community according to the provisions of Article XI of these Bylaws. This seat on the Board of Directors is referred to in these Bylaws as Seat 15.
  - f. The President ex officio, who shall be a voting member.
2. In carrying out its responsibilities to fill Seats 1 through 8, the Nominating Committee shall seek to ensure that the ICANN Board is composed of

members who in the aggregate display diversity in geography, culture, skills, experience, and perspective, by applying the criteria set forth in [Section 3 of this Article](#). At no time when it makes its selection shall the Nominating Committee select a Director to fill any vacancy or expired term whose selection would cause the total number of Directors (not including the President) from countries in any one Geographic Region (as defined in [Section 5 of this Article](#)) to exceed five; and the Nominating Committee shall ensure when it makes its selections that the Board includes at least one Director who is from a country in each ICANN Geographic Region ("Diversity Calculation").

For purposes of this sub-section 2 of Article VI, Section 2 of the ICANN Bylaws, if any candidate for director maintains citizenship of more than one country, or has been domiciled for more than five years in a country of which the candidate does not maintain citizenship ("Domicile"), that candidate may be deemed to be from either country and must select in his/her Statement of Interest the country of citizenship or Domicile that he/she wants the Nominating Committee to use for Diversity Calculation purposes. For purposes of this sub-section 2 of Article VI, Section 2 of the ICANN Bylaws, a person can only have one "Domicile," which shall be determined by where the candidate has a permanent residence and place of habitation.

3. In carrying out their responsibilities to fill Seats 9 through 15, the Supporting Organizations and the At-Large Community shall seek to ensure that the ICANN Board is composed of members that in the aggregate display diversity in geography, culture, skills, experience, and perspective, by applying the criteria set forth in [Section 3 of this Article](#). At any given time, no two Directors selected by a Supporting Organization shall be citizens from the same country or of countries located in the same Geographic Region.

For purposes of this sub-section 3 of Article VI, Section 2 of the ICANN Bylaws, if any candidate for director maintains citizenship of more than one country, or has been domiciled for more than five years in a country of which the candidate does not maintain citizenship ("Domicile"), that candidate may be deemed to be from either country and must select in his/her Statement of Interest the country of citizenship or Domicile that he/she wants the Supporting Organization or the At-Large Community to use for selection purposes. For purposes of this sub-section 3 of Article VI, Section 2 of the ICANN Bylaws, a person can only have one "Domicile," which shall be determined by where the candidate has a permanent residence and place of habitation.

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

### Section 3. CRITERIA FOR SELECTION OF DIRECTORS

ICANN Directors shall be:

1. Accomplished persons of integrity, objectivity, and intelligence, with reputations for sound judgment and open minds, and a demonstrated capacity for thoughtful group decision-making;
2. Persons with an understanding of ICANN's mission and the potential impact of ICANN decisions on the global Internet community, and committed to the success of ICANN;
3. Persons who will produce the broadest cultural and geographic diversity on the Board consistent with meeting the other criteria set forth in this Section;
4. Persons who, in the aggregate, have personal familiarity with the operation of gTLD registries and registrars; with ccTLD registries; with IP address registries; with Internet technical standards and protocols; with policy-development procedures, legal traditions, and the public interest; and with the broad range of business, individual, academic, and non-commercial users of the Internet; and
5. Persons who are able to work and communicate in written and spoken English.

### Section 4. ADDITIONAL QUALIFICATIONS

1. Notwithstanding anything herein to the contrary, no official of a national government or a multinational entity established by treaty or other agreement between national governments may serve as a Director. As used herein, the term "official" means a person (i) who holds an elective governmental office or (ii) who is employed by such government or multinational entity and whose primary function with such government or entity is to develop or influence governmental or public policies.
2. No person who serves in any capacity (including as a liaison) on any Supporting Organization Council shall simultaneously serve as a Director or liaison to the Board. If such a person accepts a nomination to be considered for selection by the Supporting Organization Council or the At-Large Community to be a Director, the person shall not, following such nomination, participate in any discussion of, or vote by, the Supporting Organization Council or the committee designated by the At-Large Community relating to the selection of Directors by the Council or Community, until the Council or committee(s) designated by

the At-Large Community has selected the full complement of Directors it is responsible for selecting. In the event that a person serving in any capacity on a Supporting Organization Council accepts a nomination to be considered for selection as a Director, the constituency group or other group or entity that selected the person may select a replacement for purposes of the Council's selection process. In the event that a person serving in any capacity on the At-Large Advisory Committee accepts a nomination to be considered for selection by the At-Large Community as a Director, the Regional At-Large Organization or other group or entity that selected the person may select a replacement for purposes of the Community's selection process.

3. Persons serving in any capacity on the Nominating Committee shall be ineligible for selection to positions on the Board as provided by [Article VII, Section 8](#).

### **Section 5. INTERNATIONAL REPRESENTATION**

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

### **Section 6. DIRECTORS' CONFLICTS OF INTEREST**

The Board, through the Board Governance Committee, shall require a statement from each Director not less frequently than once a year setting forth all business and other affiliations that relate in any way to the business and other affiliations of ICANN. Each Director shall be responsible for disclosing to ICANN any matter that could reasonably be considered to make such Director an "interested director" within the meaning of Section 5233 of the California Nonprofit Public Benefit Corporation Law ("CNPBCL"). In addition, each Director shall disclose to ICANN any relationship or other factor that could

reasonably be considered to cause the Director to be considered to be an "interested person" within the meaning of Section 5227 of the CNPBCL. The Board shall adopt policies specifically addressing Director, Officer, and Supporting Organization conflicts of interest. No Director shall vote on any matter in which he or she has a material and direct financial interest that would be affected by the outcome of the vote.

#### **Section 7. DUTIES OF DIRECTORS**

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

#### **Section 8. TERMS OF DIRECTORS**

1. The regular term of office of Director Seats 1 through 15 shall begin as follows:
  - a. The regular terms of Seats 1 through 3 shall begin at the conclusion of ICANN's annual meeting in 2003 and each ICANN annual meeting every third year after 2003;
  - b. The regular terms of Seats 4 through 6 shall begin at the conclusion of ICANN's annual meeting in 2004 and each ICANN annual meeting every third year after 2004;
  - c. The regular terms of Seats 7 and 8 shall begin at the conclusion of ICANN's annual meeting in 2005 and each ICANN annual meeting every third year after 2005;
  - d. The terms of Seats 9 and 12 shall continue until the conclusion of ICANN's ICANN's annual meeting in 2015. The next terms of Seats 9 and 12 shall begin at the conclusion of ICANN's annual meeting in 2015 and each ICANN annual meeting every third year after 2015;
  - e. The terms of Seats 10 and 13 shall continue until the conclusion of ICANN's annual meeting in 2013. The next terms of Seats 10 and 13 shall begin at the conclusion of ICANN's annual meeting in 2013 and each ICANN annual meeting every third year after 2013; and
  - f. The terms of Seats 11, 14 and 15 shall continue until the conclusion of ICANN's annual meeting in 2014. The next terms of Seats 11, 14 and 15 shall begin at the conclusion of ICANN's annual meeting in 2014 and each ICANN annual meeting every

third year after 2014.

2. Each Director holding any of Seats 1 through 15, including a Director selected to fill a vacancy, shall hold office for a term that lasts until the next term for that Seat commences and until a successor has been selected and qualified or until that Director resigns or is removed in accordance with these Bylaws.
3. At least two months before the commencement of each annual meeting, the Nominating Committee shall give the Secretary of ICANN written notice of its selection of Directors for seats with terms beginning at the conclusion of the annual meeting.
4. At least six months before the date specified for the commencement of the term as specified in paragraphs 1.d-f above, any Supporting Organization or the At-Large community entitled to select a Director for a Seat with a term beginning that year shall give the Secretary of ICANN written notice of its selection.
5. Subject to the provisions of the Transition Article of these Bylaws, no Director may serve more than three consecutive terms. For these purposes, a person selected to fill a vacancy in a term shall not be deemed to have served that term. (Note: In the period prior to the beginning of the first regular term of Seat 15 in 2010, Seat 15 was deemed vacant for the purposes of calculation of terms of service.)
6. The term as Director of the person holding the office of President shall be for as long as, and only for as long as, such person holds the office of President.

#### **Section 9. NON-VOTING LIAISONS**

1. The non-voting liaisons shall include:
  - a. One appointed by the Governmental Advisory Committee;
  - b. One appointed by the Root Server System Advisory Committee established by Article XI of these Bylaws;
  - c. One appointed by the Security and Stability Advisory Committee established by Article XI of these Bylaws;
  - d. One appointed by the Internet Engineering Task Force.
2. The non-voting liaisons shall serve terms that begin at the conclusion of each annual meeting. At least one month before the commencement of each annual meeting, each body entitled to appoint a non-voting liaison shall give the Secretary of ICANN written notice of its

appointment.

3. Each non-voting liaison may be reappointed, and shall remain in that position until a successor has been appointed or until the liaison resigns or is removed in accordance with these Bylaws.
4. The non-voting liaisons shall be entitled to attend Board meetings, participate in Board discussions and deliberations, and have access (under conditions established by the Board) to materials provided to Directors for use in Board discussions, deliberations and meetings, but shall otherwise not have any of the rights and privileges of Directors. Non-voting liaisons shall be entitled (under conditions established by the Board) to use any materials provided to them pursuant to this Section for the purpose of consulting with their respective committee or organization.

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

Subject to Section 5226 of the CNPBCL, any Director or non-voting liaison may resign at any time, either by oral tender of resignation at any meeting of the Board (followed by prompt written notice to the Secretary of ICANN) or by giving written notice thereof to the President or the Secretary of ICANN. Such resignation shall take effect at the time specified, and, unless otherwise specified, the acceptance of such resignation shall not be necessary to make it effective. The successor shall be selected pursuant to [Section 12 of this Article](#).

#### **Section 11. REMOVAL OF A DIRECTOR OR NON-VOTING LIAISON**

1. Any Director may be removed, following notice to that Director, by a three-fourths (3/4) majority vote of all Directors; provided, however, that the Director who is the subject of the removal action shall not be entitled to vote on such an action or be counted as a voting member of the Board when calculating the required three-fourths (3/4) vote; and provided further, that each vote to remove a Director shall be a separate vote on the sole question of the removal of that particular Director. If the Director was selected by a Supporting Organization, notice must be provided to that Supporting Organization at the same time notice is provided to the Director. If the Director was selected by the At-Large Community, notice must be provided to the At-Large Advisory Committee at the same time notice is provided to the Director.
2. With the exception of the non-voting liaison appointed by the Governmental Advisory Committee, any non-voting liaison may be

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

## **Section 12. VACANCIES**

1. A vacancy or vacancies in the Board of Directors shall be deemed to exist in the case of the death, resignation, or removal of any Director; if the authorized number of Directors is increased; or if a Director has been declared of unsound mind by a final order of court or convicted of a felony or incarcerated for more than 90 days as a result of a criminal conviction or has been found by final order or judgment of any court to have breached a duty under Sections 5230 et seq. of the CNPBCL. Any vacancy occurring on the Board of Directors shall be filled by the Nominating Committee, unless (a) that Director was selected by a Supporting Organization, in which case that vacancy shall be filled by that Supporting Organization, or (b) that Director was the President, in which case the vacancy shall be filled in accordance with the provisions of [Article XIII of these Bylaws](#). The selecting body shall give written notice to the Secretary of ICANN of their appointments to fill vacancies. A Director selected to fill a vacancy on the Board shall serve for the unexpired term of his or her predecessor in office and until a successor has been selected and qualified. No reduction of the authorized number of Directors shall have the effect of removing a Director prior to the expiration of the Director's term of office.
2. The organizations selecting the non-voting liaisons identified in [Section 9 of this Article](#) are responsible for determining the existence of, and filling, any vacancies in those positions. They shall give the Secretary of ICANN written notice of their appointments to fill vacancies.

## **Section 13. ANNUAL MEETINGS**

Annual meetings of ICANN shall be held for the purpose of electing Officers and for the transaction of such other business as may come before the meeting. Each annual meeting for ICANN shall be held at the principal office of ICANN, or any other appropriate place of the Board's time and choosing, provided such annual meeting is held within 14 months of the immediately preceding annual meeting. If the Board determines that it is practical, the annual meeting should be distributed in real-time and archived video and

audio formats on the Internet.

#### **Section 14. REGULAR MEETINGS**

Regular meetings of the Board shall be held on dates to be determined by the Board. In the absence of other designation, regular meetings shall be held at the principal office of ICANN.

#### **Section 15. SPECIAL MEETINGS**

Special meetings of the Board may be called by or at the request of one-quarter (1/4) of the members of the Board or by the Chairman of the Board or the President. A call for a special meeting shall be made by the Secretary of ICANN. In the absence of designation, special meetings shall be held at the principal office of ICANN.

#### **Section 16. NOTICE OF MEETINGS**

Notice of time and place of all meetings shall be delivered personally or by telephone or by electronic mail to each Director and non-voting liaison, or sent by first-class mail (air mail for addresses outside the United States) or facsimile, charges prepaid, addressed to each Director and non-voting liaison at the Director's or non-voting liaison's address as it is shown on the records of ICANN. In case the notice is mailed, it shall be deposited in the United States mail at least fourteen (14) days before the time of the holding of the meeting. In case the notice is delivered personally or by telephone or facsimile or electronic mail it shall be delivered personally or by telephone or facsimile or electronic mail at least forty-eight (48) hours before the time of the holding of the meeting. Notwithstanding anything in this Section to the contrary, notice of a meeting need not be given to any Director who signed a waiver of notice or a written consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to such Director. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meetings.

#### **Section 17. QUORUM**

At all annual, regular, and special meetings of the Board, a majority of the total number of Directors then in office shall constitute a quorum for the transaction of business, and the act of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board, unless otherwise provided herein or by law. If a quorum shall not be present at any meeting of the Board, the Directors present thereat may adjourn the meeting from time to time to another place, time, or date. If the meeting is adjourned for more than

twenty-four (24) hours, notice shall be given to those Directors not at the meeting at the time of the adjournment.

**Section 18. ACTION BY TELEPHONE MEETING OR BY OTHER COMMUNICATIONS EQUIPMENT**

Members of the Board or any Committee of the Board may participate in a meeting of the Board or Committee of the Board through use of (i) conference telephone or similar communications equipment, provided that all Directors participating in such a meeting can speak to and hear one another or (ii) electronic video screen communication or other communication equipment; provided that (a) all Directors participating in such a meeting can speak to and hear one another, (b) all Directors are provided the means of fully participating in all matters before the Board or Committee of the Board, and (c) ICANN adopts and implements means of verifying that (x) a person participating in such a meeting is a Director or other person entitled to participate in the meeting and (y) all actions of, or votes by, the Board or Committee of the Board are taken or cast only by the members of the Board or Committee and not persons who are not members. Participation in a meeting pursuant to this Section constitutes presence in person at such meeting. ICANN shall make available at the place of any meeting of the Board the telecommunications equipment necessary to permit members of the Board to participate by telephone.

**Section 19. ACTION WITHOUT MEETING**

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

**Section 20. ELECTRONIC MAIL**

If permitted under applicable law, communication by electronic mail shall be considered equivalent to any communication otherwise required to be in writing. ICANN shall take such steps as it deems appropriate under the circumstances to assure itself that communications by electronic mail are authentic.

**Section 21. RIGHTS OF INSPECTION**

Every Director shall have the right at any reasonable time to inspect and copy all books, records and documents of every kind, and to inspect the physical

properties of ICANN. ICANN shall establish reasonable procedures to protect against the inappropriate disclosure of confidential information.

## **Section 22. COMPENSATION**

1. Except for the President of ICANN, who serves ex officio as a voting member of the Board, each of the Directors shall be entitled to receive compensation for his/her services as a Director. The President shall receive only his/her compensation for service as President and shall not receive additional compensation for service as a Director.
2. If the Board determines to offer a compensation arrangement to one or more Directors other than the President of ICANN for services to ICANN as Directors, the Board shall follow a process that is calculated to pay an amount for service as a Director that is in its entirety Reasonable Compensation for such service under the standards set forth in §53.4958-4(b) of the Treasury Regulations.
3. As part of the process, the Board shall retain an Independent Valuation Expert to consult with and to advise the Board regarding Director compensation arrangements and to issue to the Board a Reasoned Written Opinion from such expert regarding the ranges of Reasonable Compensation for any such services by a Director. The expert's opinion shall address all relevant factors affecting the level of compensation to be paid a Director, including offices held on the Board, attendance at Board and Committee meetings, the nature of service on the Board and on Board Committees, and appropriate data as to comparability regarding director compensation arrangements for U.S.-based, nonprofit, tax-exempt organizations possessing a global employee base.
4. After having reviewed the expert's written opinion, the Board shall meet with the expert to discuss the expert's opinion and to ask questions of the expert regarding the expert's opinion, the comparability data obtained and relied upon, and the conclusions reached by the expert.
5. The Board shall adequately document the basis for any determination the Board makes regarding a Director compensation arrangement concurrently with making that determination.
6. In addition to authorizing payment of compensation for services as Directors as set forth in this Section 22, the Board may also authorize the reimbursement of actual and necessary reasonable expenses incurred by any Director and by non-voting liaisons performing their duties as Directors or non-voting liaisons.

7. As used in this Section 22, the following terms shall have the following meanings:
- a. An "Independent Valuation Expert" means a person retained by ICANN to value compensation arrangements that: (i) holds itself out to the public as a compensation consultant; (ii) performs valuations regarding compensation arrangements on a regular basis, with a majority of its compensation consulting services performed for persons other than ICANN; (iii) is qualified to make valuations of the type of services involved in any engagement by and for ICANN; (iv) issues to ICANN a Reasoned Written Opinion regarding a particular compensation arrangement; and (v) includes in its Reasoned Written Opinion a certification that it meets the requirements set forth in (i) through (iv) of this definition.
  - b. A "Reasoned Written Opinion" means a written opinion of a valuation expert who meets the requirements of subparagraph 7(a) (i) through (iv) of this Section. To be reasoned, the opinion must be based upon a full disclosure by ICANN to the valuation expert of the factual situation regarding the compensation arrangement that is the subject of the opinion, the opinion must articulate the applicable valuation standards relevant in valuing such compensation arrangement, and the opinion must apply those standards to such compensation arrangement, and the opinion must arrive at a conclusion regarding the whether the compensation arrangement is within the range of Reasonable Compensation for the services covered by the arrangement. A written opinion is reasoned even though it reaches a conclusion that is subsequently determined to be incorrect so long as the opinion addresses itself to the facts and the applicable standards. However, a written opinion is not reasoned if it does nothing more than recite the facts and express a conclusion.
  - c. "Reasonable Compensation" shall have the meaning set forth in §53.4958-4(b)(1)(ii) of the Regulations issued under §4958 of the Code.
8. Each of the non-voting liaisons to the Board, with the exception of the Governmental Advisory Committee liaison, shall be entitled to receive compensation for his/her services as a non-voting liaison. If the Board determines to offer a compensation arrangement to one or more non-voting liaisons, the Board shall approve that arrangement by a required three-fourths (3/4) vote.

**Section 23. PRESUMPTION OF ASSENT**

A Director present at a Board meeting at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his or her dissent or abstention is entered in the minutes of the meeting, or unless such Director files a written dissent or abstention to such action with the person acting as the secretary of the meeting before the adjournment thereof, or forwards such dissent or abstention by registered mail to the Secretary of ICANN immediately after the adjournment of the meeting. Such right to dissent or abstain shall not apply to a Director who voted in favor of such action.

## ARTICLE VII: NOMINATING COMMITTEE

### Section 1. DESCRIPTION

There shall be a Nominating Committee of ICANN, responsible for the selection of all ICANN Directors except the President and those Directors selected by ICANN's Supporting Organizations, and for such other selections as are set forth in these Bylaws.

### Section 2. COMPOSITION

The Nominating Committee shall be composed of the following persons:

1. A non-voting Chair, appointed by the ICANN Board;
2. A non-voting Chair-Elect, appointed by the ICANN Board as a non-voting advisor;
3. A non-voting liaison appointed by the ICANN Root Server System Advisory Committee established by [Article XI of these Bylaws](#);
4. A non-voting liaison appointed by the ICANN Security and Stability Advisory Committee established by [Article XI of these Bylaws](#);
5. A non-voting liaison appointed by the [Governmental Advisory Committee](#);
6. Subject to the provisions of the Transition Article of these Bylaws, five voting delegates selected by the At-Large Advisory Committee established by [Article XI of these Bylaws](#);
7. Voting delegates to the Nominating Committee shall be selected from the Generic Names Supporting Organization, established by [Article X of these Bylaws](#), as follows:
  - a. One delegate from the Registries Stakeholder Group;

- b. One delegate from the Registrars Stakeholder Group;
  - c. Two delegates from the Business Constituency, one representing small business users and one representing large business users;
  - d. One delegate from the Internet Service Providers Constituency;
  - e. One delegate from the Intellectual Property Constituency; and
  - f. One delegate from consumer and civil society groups, selected by the Non-Commercial Users Constituency.
8. One voting delegate each selected by the following entities:
- a. The Council of the Country Code Names Supporting Organization established by [Article IX of these Bylaws](#);
  - b. The Council of the Address Supporting Organization established by [Article VIII of these Bylaws](#); and
  - c. The Internet Engineering Task Force.
9. A non-voting Associate Chair, who may be appointed by the Chair, at his or her sole discretion, to serve during all or part of the term of the Chair. The Associate Chair may not be a person who is otherwise a member of the same Nominating Committee. The Associate Chair shall assist the Chair in carrying out the duties of the Chair, but shall not serve, temporarily or otherwise, in the place of the Chair.

### Section 3. TERMS

Subject to the provisions of the [Transition Article of these Bylaws](#):

- 1. Each voting delegate shall serve a one-year term. A delegate may serve at most two successive one-year terms, after which at least two years must elapse before the individual is eligible to serve another term.
- 2. The regular term of each voting delegate shall begin at the conclusion of an [ICANN](#) annual meeting and shall end at the conclusion of the immediately following [ICANN](#) annual meeting.
- 3. Non-voting liaisons shall serve during the term designated by the entity that appoints them. The Chair, the Chair-Elect, and any Associate Chair shall serve as such until the conclusion of the next [ICANN](#) annual meeting.

4. It is anticipated that upon the conclusion of the term of the Chair-Elect, the Chair-Elect will be appointed by the Board to the position of Chair. However, the Board retains the discretion to appoint any other person to the position of Chair. At the time of appointing a Chair-Elect, if the Board determines that the person identified to serve as Chair shall be appointed as Chair for a successive term, the Chair-Elect position shall remain vacant for the term designated by the Board.
5. Vacancies in the positions of delegate, non-voting liaison, Chair or Chair-Elect shall be filled by the entity entitled to select the delegate, non-voting liaison, Chair or Chair-Elect involved. For any term that the Chair-Elect position is vacant pursuant to paragraph 4 of this Article, or until any other vacancy in the position of Chair-Elect can be filled, a non-voting advisor to the Chair may be appointed by the Board from among persons with prior service on the Board or a Nominating Committee, including the immediately previous Chair of the Nominating Committee. A vacancy in the position of Associate Chair may be filled by the Chair in accordance with the criteria established by Section 2(9) of this Article.
6. The existence of any vacancies shall not affect the obligation of the Nominating Committee to carry out the responsibilities assigned to it in these Bylaws.

**Section 4. CRITERIA FOR SELECTION OF NOMINATING COMMITTEE DELEGATES**

Delegates to the ICANN Nominating Committee shall be:

1. Accomplished persons of integrity, objectivity, and intelligence, with reputations for sound judgment and open minds, and with experience and competence with collegial large group decision-making;
2. Persons with wide contacts, broad experience in the Internet community, and a commitment to the success of ICANN;
3. Persons whom the selecting body is confident will consult widely and accept input in carrying out their responsibilities;
4. Persons who are neutral and objective, without any fixed personal commitments to particular individuals, organizations, or commercial objectives in carrying out their Nominating Committee responsibilities;
5. Persons with an understanding of ICANN's mission and the potential impact of ICANN's activities on the broader Internet community who are willing to serve as volunteers, without compensation other than the

reimbursement of certain expenses; and

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

#### **Section 5. DIVERSITY**

In carrying out its responsibilities to select members of the ICANN Board (and selections to any other ICANN bodies as the Nominating Committee is responsible for under these Bylaws), the Nominating Committee shall take into account the continuing membership of the ICANN Board (and such other bodies), and seek to ensure that the persons selected to fill vacancies on the ICANN Board (and each such other body) shall, to the extent feasible and consistent with the other criteria required to be applied by [Section 4 of this Article](#), make selections guided by Core Value 4 in [Article I, Section 2](#) .

#### **Section 6. ADMINISTRATIVE AND OPERATIONAL SUPPORT**

ICANN shall provide administrative and operational support necessary for the Nominating Committee to carry out its responsibilities.

#### **Section 7. PROCEDURES**

The Nominating Committee shall adopt such operating procedures as it deems necessary, which shall be published on the Website.

#### **Section 8. INELIGIBILITY FOR SELECTION BY NOMINATING COMMITTEE**

No person who serves on the Nominating Committee in any capacity shall be eligible for selection by any means to any position on the Board or any other ICANN body having one or more membership positions that the Nominating Committee is responsible for filling, until the conclusion of an ICANN annual meeting that coincides with, or is after, the conclusion of that person's service on the Nominating Committee.

#### **Section 9. INELIGIBILITY FOR SERVICE ON NOMINATING COMMITTEE**

No person who is an employee of or paid consultant to ICANN (including the Ombudsman) shall simultaneously serve in any of the Nominating Committee positions described in [Section 2 of this Article](#).

### **ARTICLE VIII: ADDRESS SUPPORTING ORGANIZATION**

#### **Section 1. DESCRIPTION**

1. The Address Supporting Organization (ASO) shall advise the Board with respect to policy issues relating to the operation, assignment, and management of Internet addresses.
2. The ASO shall be the entity established by the Memorandum of Understanding entered on 21 October 2004 between ICANN and the Number Resource Organization (NRO), an organization of the existing regional Internet registries (RIRs).

## **Section 2. ADDRESS COUNCIL**

1. The ASO shall have an Address Council, consisting of the members of the NRO Number Council.
2. The Address Council shall select Directors to those seats on the Board designated to be filled by the ASO.

## **ARTICLE IX: COUNTRY-CODE NAMES SUPPORTING ORGANIZATION**

### **Section 1. DESCRIPTION**

There shall be a policy-development body known as the Country-Code Names Supporting Organization (ccNSO), which shall be responsible for:

1. developing and recommending to the Board global policies relating to country-code top-level domains;
2. Nurturing consensus across the ccNSO's community, including the name-related activities of ccTLDs; and
3. Coordinating with other ICANN Supporting Organizations, committees, and constituencies under ICANN.

Policies that apply to ccNSO members by virtue of their membership are only those policies developed according to section 4.10 and 4.11 of this Article. However, the ccNSO may also engage in other activities authorized by its members. Adherence to the results of these activities will be voluntary and such activities may include: seeking to develop voluntary best practices for ccTLD managers, assisting in skills building within the global community of ccTLD managers, and enhancing operational and technical cooperation among ccTLD managers.

### **Section 2. ORGANIZATION**

The ccNSO shall consist of (i) ccTLD managers that have agreed in writing to be members of the ccNSO (see [Section 4\(2\) of this Article](#)) and (ii) a ccNSO Council responsible for managing the policy-development process of the ccNSO.

### **Section 3. ccNSO COUNCIL**

1. The ccNSO Council shall consist of (a) three ccNSO Council members selected by the ccNSO members within each of [ICANN's Geographic Regions](#) in the manner described in [Section 4\(7\) through \(9\) of this Article](#); (b) three ccNSO Council members selected by the ICANN Nominating Committee; (c) liaisons as described in [paragraph 2 of this Section](#); and (iv) observers as described in [paragraph 3 of this Section](#).
2. There shall also be one liaison to the ccNSO Council from each of the following organizations, to the extent they choose to appoint such a liaison: (a) the Governmental Advisory Committee; (b) the At-Large Advisory Committee; and (c) each of the Regional Organizations described in [Section 5 of this Article](#). These liaisons shall not be members of or entitled to vote on the ccNSO Council, but otherwise shall be entitled to participate on equal footing with members of the ccNSO Council. Appointments of liaisons shall be made by providing written notice to the ICANN Secretary, with a notification copy to the ccNSO Council Chair, and shall be for the term designated by the appointing organization as stated in the written notice. The appointing organization may recall from office or replace its liaison at any time by providing written notice of the recall or replacement to the ICANN Secretary, with a notification copy to the ccNSO Council Chair.
3. The ccNSO Council may agree with the Council of any other ICANN Supporting Organization to exchange observers. Such observers shall not be members of or entitled to vote on the ccNSO Council, but otherwise shall be entitled to participate on equal footing with members of the ccNSO Council. The appointing Council may designate its observer (or revoke or change the designation of its observer) on the ccNSO Council at any time by providing written notice to the ICANN Secretary, with a notification copy to the ccNSO Council Chair.
4. Subject to the provisions of the [Transition Article of these Bylaws](#): (a) the regular term of each ccNSO Council member shall begin at the conclusion of an ICANN annual meeting and shall end at the conclusion of the third ICANN annual meeting thereafter; (b) the regular terms of the three ccNSO Council members selected by the ccNSO members within each ICANN Geographic Region shall be staggered so that one member's term begins in a year divisible by

three, a second member's term begins in the first year following a year divisible by three, and the third member's term begins in the second year following a year divisible by three; and (c) the regular terms of the three ccNSO Council members selected by the Nominating Committee shall be staggered in the same manner. Each ccNSO Council member shall hold office during his or her regular term and until a successor has been selected and qualified or until that member resigns or is removed in accordance with these Bylaws.

5. A ccNSO Council member may resign at any time by giving written notice to the ICANN Secretary, with a notification copy to the ccNSO Council Chair.
6. ccNSO Council members may be removed for not attending three consecutive meetings of the ccNSO Council without sufficient cause or for grossly inappropriate behavior, both as determined by at least a 66% vote of all of the members of the ccNSO Council.
7. A vacancy on the ccNSO Council shall be deemed to exist in the case of the death, resignation, or removal of any ccNSO Council member. Vacancies in the positions of the three members selected by the Nominating Committee shall be filled for the unexpired term involved by the Nominating Committee giving the ICANN Secretary written notice of its selection, with a notification copy to the ccNSO Council Chair. Vacancies in the positions of the ccNSO Council members selected by ccNSO members shall be filled for the unexpired term by the procedure described in [Section 4\(7\) through \(9\) of this Article](#).
8. The role of the ccNSO Council is to administer and coordinate the affairs of the ccNSO (including coordinating meetings, including an annual meeting, of ccNSO members as described in [Section 4\(6\) of this Article](#)) and to manage the development of policy recommendations in accordance with Section 6 of this Article. The ccNSO Council shall also undertake such other roles as the members of the ccNSO shall decide from time to time.
9. The ccNSO Council shall make selections to fill Seats 11 and 12 on the Board by written ballot or by action at a meeting; any such selection must have affirmative votes of a majority of all the members of the ccNSO Council then in office. Notification of the ccNSO Council's selections shall be given by the ccNSO Council Chair in writing to the ICANN Secretary, consistent with Article VI, [Sections 8\(4\) and 12\(1\)](#).
10. The ccNSO Council shall select from among its members the ccNSO Council Chair and such Vice Chair(s) as it deems appropriate. Selections of the ccNSO Council Chair and Vice Chair(s) shall be by

written ballot or by action at a meeting; any such selection must have affirmative votes of a majority of all the members of the ccNSO Council then in office. The term of office of the ccNSO Council Chair and any Vice Chair(s) shall be as specified by the ccNSO Council at or before the time the selection is made. The ccNSO Council Chair or any Vice Chair(s) may be recalled from office by the same procedure as used for selection.

11. The ccNSO Council, subject to direction by the ccNSO members, shall adopt such rules and procedures for the ccNSO as it deems necessary, provided they are consistent with these Bylaws. Rules for ccNSO membership and operating procedures adopted by the ccNSO Council shall be published on the Website.
12. Except as provided by [paragraphs 9 and 10 of this Section](#), the ccNSO Council shall act at meetings. The ccNSO Council shall meet regularly on a schedule it determines, but not fewer than four times each calendar year. At the discretion of the ccNSO Council, meetings may be held in person or by other means, provided that all ccNSO Council members are permitted to participate by at least one means described in [paragraph 14 of this Section](#). Except where determined by a majority vote of the members of the ccNSO Council present that a closed session is appropriate, physical meetings shall be open to attendance by all interested persons. To the extent practicable, ccNSO Council meetings should be held in conjunction with meetings of the Board, or of one or more of ICANN's other Supporting Organizations.
13. Notice of time and place (and information about means of participation other than personal attendance) of all meetings of the ccNSO Council shall be provided to each ccNSO Council member, liaison, and observer by e-mail, telephone, facsimile, or a paper notice delivered personally or by postal mail. In case the notice is sent by postal mail, it shall be sent at least 21 days before the day of the meeting. In case the notice is delivered personally or by telephone, facsimile, or e-mail it shall be provided at least seven days before the day of the meeting. At least seven days in advance of each ccNSO Council meeting (or if not practicable, as far in advance as is practicable), a notice of such meeting and, to the extent known, an agenda for the meeting shall be posted.
14. Members of the ccNSO Council may participate in a meeting of the ccNSO Council through personal attendance or use of electronic communication (such as telephone or video conference), provided that (a) all ccNSO Council members participating in the meeting can speak to and hear one another, (b) all ccNSO Council members participating

in the meeting are provided the means of fully participating in all matters before the ccNSO Council, and (c) there is a reasonable means of verifying the identity of ccNSO Council members participating in the meeting and their votes. A majority of the ccNSO Council members (i.e. those entitled to vote) then in office shall constitute a quorum for the transaction of business, and actions by a majority vote of the ccNSO Council members present at any meeting at which there is a quorum shall be actions of the ccNSO Council, unless otherwise provided in these Bylaws. The ccNSO Council shall transmit minutes of its meetings to the ICANN Secretary, who shall cause those minutes to be posted to the Website as soon as practicable following the meeting, and no later than 21 days following the meeting.

#### **Section 4. MEMBERSHIP**

1. The ccNSO shall have a membership consisting of ccTLD managers. Any ccTLD manager that meets the membership qualifications stated in [paragraph 2 of this Section](#) shall be entitled to be members of the ccNSO. For purposes of this Article, a ccTLD manager is the organization or entity responsible for managing an ISO 3166 country-code top-level domain and referred to in the IANA database under the current heading of "Sponsoring Organization", or under any later variant, for that country-code top-level domain.
2. Any ccTLD manager may become a ccNSO member by submitting an application to a person designated by the ccNSO Council to receive applications. Subject to the provisions of the Transition Article of these Bylaws, the application shall be in writing in a form designated by the ccNSO Council. The application shall include the ccTLD manager's recognition of the role of the ccNSO within the ICANN structure as well as the ccTLD manager's agreement, for the duration of its membership in the ccNSO, (a) to adhere to rules of the ccNSO, including membership rules, (b) to abide by policies developed and recommended by the ccNSO and adopted by the Board in the manner described by paragraphs 10 and 11 of this Section, and (c) to pay ccNSO membership fees established by the ccNSO Council under [Section 7\(3\) of this Article](#). A ccNSO member may resign from membership at any time by giving written notice to a person designated by the ccNSO Council to receive notices of resignation. Upon resignation the ccTLD manager ceases to agree to (a) adhere to rules of the ccNSO, including membership rules, (b) to abide by policies developed and recommended by the ccNSO and adopted by the Board in the manner described by paragraphs 10 and 11 of this

Section, and (c) to pay ccNSO membership fees established by the ccNSO Council under [Section 7\(3\) of this Article](#). In the absence of designation by the ccNSO Council of a person to receive applications and notices of resignation, they shall be sent to the ICANN Secretary, who shall notify the ccNSO Council of receipt of any such applications and notices.

3. Neither membership in the ccNSO nor membership in any Regional Organization described in [Section 5 of this Article](#) shall be a condition for access to or registration in the IANA database. Any individual relationship a ccTLD manager has with ICANN or the ccTLD manager's receipt of IANA services is not in any way contingent upon membership in the ccNSO.
4. The Geographic Regions of ccTLDs shall be as described in [Article VI, Section 5 of these Bylaws](#). For purposes of this Article, managers of ccTLDs within a Geographic Region that are members of the ccNSO are referred to as ccNSO members "within" the Geographic Region, regardless of the physical location of the ccTLD manager. In cases where the Geographic Region of a ccNSO member is unclear, the ccTLD member should self-select according to procedures adopted by the ccNSO Council.
5. Each ccTLD manager may designate in writing a person, organization, or entity to represent the ccTLD manager. In the absence of such a designation, the ccTLD manager shall be represented by the person, organization, or entity listed as the administrative contact in the IANA database.
6. There shall be an annual meeting of ccNSO members, which shall be coordinated by the ccNSO Council. Annual meetings should be open for all to attend, and a reasonable opportunity shall be provided for ccTLD managers that are not members of the ccNSO as well as other non-members of the ccNSO to address the meeting. To the extent practicable, annual meetings of the ccNSO members shall be held in person and should be held in conjunction with meetings of the Board, or of one or more of ICANN's other Supporting Organizations.
7. The ccNSO Council members selected by the ccNSO members from each Geographic Region (see [Section 3\(1\)\(a\) of this Article](#)) shall be selected through nomination, and if necessary election, by the ccNSO members within that Geographic Region. At least 90 days before the end of the regular term of any ccNSO-member-selected member of the ccNSO Council, or upon the occurrence of a vacancy in the seat of such a ccNSO Council member, the ccNSO Council shall establish a nomination and election schedule, which shall be sent to all ccNSO

members within the Geographic Region and posted on the Website.

8. Any ccNSO member may nominate an individual to serve as a ccNSO Council member representing the ccNSO member's Geographic Region. Nominations must be seconded by another ccNSO member from the same Geographic Region. By accepting their nomination, individuals nominated to the ccNSO Council agree to support the policies committed to by ccNSO members.
9. If at the close of nominations there are no more candidates nominated (with seconds and acceptances) in a particular Geographic Region than there are seats on the ccNSO Council available for that Geographic Region, then the nominated candidates shall be selected to serve on the ccNSO Council. Otherwise, an election by written ballot (which may be by e-mail) shall be held to select the ccNSO Council members from among those nominated (with seconds and acceptances), with ccNSO members from the Geographic Region being entitled to vote in the election through their designated representatives. In such an election, a majority of all ccNSO members in the Geographic Region entitled to vote shall constitute a quorum, and the selected candidate must receive the votes of a majority of those cast by ccNSO members within the Geographic Region. The ccNSO Council Chair shall provide the ICANN Secretary prompt written notice of the selection of ccNSO Council members under this paragraph.
10. Subject to clause 4(11), ICANN policies shall apply to ccNSO members by virtue of their membership to the extent, and only to the extent, that the policies (a) only address issues that are within scope of the ccNSO according to Article IX, Section 6 and Annex C; (b) have been developed through the ccPDP as described in [Section 6 of this Article](#), and (c) have been recommended as such by the ccNSO to the Board, and (d) are adopted by the Board as policies, provided that such policies do not conflict with the law applicable to the ccTLD manager which shall, at all times, remain paramount. In addition, such policies shall apply to ICANN in its activities concerning ccTLDs.
11. A ccNSO member shall not be bound if it provides a declaration to the ccNSO Council stating that (a) implementation of the policy would require the member to breach custom, religion, or public policy (not embodied in the applicable law described in [paragraph 10 of this Section](#)), and (b) failure to implement the policy would not impair DNS operations or interoperability, giving detailed reasons supporting its statements. After investigation, the ccNSO Council will provide a response to the ccNSO member's declaration. If there is a ccNSO

Council consensus disagreeing with the declaration, which may be demonstrated by a vote of 14 or more members of the ccNSO Council, the response shall state the ccNSO Council's disagreement with the declaration and the reasons for disagreement. Otherwise, the response shall state the ccNSO Council's agreement with the declaration. If the ccNSO Council disagrees, the ccNSO Council shall review the situation after a six-month period. At the end of that period, the ccNSO Council shall make findings as to (a) whether the ccNSO members' implementation of the policy would require the member to breach custom, religion, or public policy (not embodied in the applicable law described in [paragraph 10 of this Section](#)) and (b) whether failure to implement the policy would impair DNS operations or interoperability. In making any findings disagreeing with the declaration, the ccNSO Council shall proceed by consensus, which may be demonstrated by a vote of 14 or more members of the ccNSO Council.

## **Section 5. REGIONAL ORGANIZATIONS**

The ccNSO Council may designate a Regional Organization for each ICANN Geographic Region, provided that the Regional Organization is open to full membership by all ccNSO members within the Geographic Region. Decisions to designate or de-designate a Regional Organization shall require a 66% vote of all of the members of the ccNSO Council and shall be subject to review according to procedures established by the Board.

## **Section 6. ccNSO POLICY-DEVELOPMENT PROCESS AND SCOPE**

1. The scope of the ccNSO's policy-development role shall be as stated in [Annex C to these Bylaws](#); any modifications to the scope shall be recommended to the Board by the ccNSO by use of the procedures of the ccPDP, and shall be subject to approval by the Board.
2. In developing global policies within the scope of the ccNSO and recommending them to the Board, the ccNSO shall follow the ccNSO Policy-Development Process (ccPDP). The ccPDP shall be as stated in [Annex B to these Bylaws](#); modifications shall be recommended to the Board by the ccNSO by use of the procedures of the ccPDP, and shall be subject to approval by the Board.

## **Section 7. STAFF SUPPORT AND FUNDING**

1. Upon request of the ccNSO Council, a member of the ICANN staff may be assigned to support the ccNSO and shall be designated as the ccNSO Staff Manager. Alternatively, the ccNSO Council may

designate, at ccNSO expense, another person to serve as ccNSO Staff Manager. The work of the ccNSO Staff Manager on substantive matters shall be assigned by the Chair of the ccNSO Council, and may include the duties of ccPDP Issue Manager.

2. Upon request of the ccNSO Council, ICANN shall provide administrative and operational support necessary for the ccNSO to carry out its responsibilities. Such support shall not include an obligation for ICANN to fund travel expenses incurred by ccNSO participants for travel to any meeting of the ccNSO or for any other purpose. The ccNSO Council may make provision, at ccNSO expense, for administrative and operational support in addition or as an alternative to support provided by ICANN.
3. The ccNSO Council shall establish fees to be paid by ccNSO members to defray ccNSO expenses as described in [paragraphs 1 and 2 of this Section](#), as approved by the ccNSO members.
4. Written notices given to the ICANN Secretary under this Article shall be permanently retained, and shall be made available for review by the ccNSO Council on request. The ICANN Secretary shall also maintain the roll of members of the ccNSO, which shall include the name of each ccTLD manager's designated representative, and which shall be posted on the Website.

## ARTICLE X: GENERIC NAMES SUPPORTING ORGANIZATION

### Section 1. DESCRIPTION

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

### Section 2. ORGANIZATION

The GNSO shall consist of:

- i. A number of Constituencies, where applicable, organized within the Stakeholder Groups as described in [Section 5 of this Article](#);
- ii. Four Stakeholder Groups organized within Houses as described in [Section 5 of this Article](#);
- iii. Two Houses within the GNSO Council as described in [Section 3\(8\) of](#)

[this Article](#); and

- iv. a [GNSO Council](#) responsible for managing the policy development process of the [GNSO](#), as described in [Section 3 of this Article](#).

Except as otherwise defined in these Bylaws, the four Stakeholder Groups and the Constituencies will be responsible for defining their own charters with the approval of their members and of the [ICANN Board of Directors](#).

### **Section 3. [GNSO COUNCIL](#)**

1. Subject to the provisions of [Transition Article XX, Section 5 of these Bylaws](#) and as described in [Section 5 of Article X](#), the [GNSO Council](#) shall consist of:

- a. three representatives selected from the Registries Stakeholder Group;
- b. three representatives selected from the Registrars Stakeholder Group;
- c. six representatives selected from the Commercial Stakeholder Group;
- d. six representatives selected from the Non-Commercial Stakeholder Group; and
- e. three representatives selected by the [ICANN Nominating Committee](#), one of which shall be non-voting, but otherwise entitled to participate on equal footing with other members of the [GNSO Council](#) including, e.g. the making and seconding of motions and of serving as Chair if elected. One Nominating Committee Appointee voting representative shall be assigned to each House (as described in [Section 3\(8\) of this Article](#)) by the Nominating Committee.

No individual representative may hold more than one seat on the [GNSO Council](#) at the same time.

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

There may also be liaisons to the [GNSO Council](#) from other [ICANN Supporting Organizations](#) and/or [Advisory Committees](#), from time to time. The appointing organization shall designate, revoke, or change its liaison on the [GNSO Council](#) by providing written notice to the Chair of the [GNSO Council](#) and to the [ICANN Secretary](#). Liaisons shall not be members of or entitled to vote, to make or second motions, or to serve as an officer on the [GNSO Council](#), but otherwise liaisons shall be entitled to participate on equal footing with members of the [GNSO Council](#).

2. Subject to the provisions of the [Transition Article XX, and Section 5 of these Bylaws](#), the regular term of each GNSO Council member shall begin at the conclusion of an ICANN annual meeting and shall end at the conclusion of the second ICANN annual meeting thereafter. The regular term of two representatives selected from Stakeholder Groups with three Council seats shall begin in even-numbered years and the regular term of the other representative selected from that Stakeholder Group shall begin in odd-numbered years. The regular term of three representatives selected from Stakeholder Groups with six Council seats shall begin in even-numbered years and the regular term of the other three representatives selected from that Stakeholder Group shall begin in odd-numbered years. The regular term of one of the three members selected by the Nominating Committee shall begin in even-numbered years and the regular term of the other two of the three members selected by the Nominating Committee shall begin in odd-numbered years. Each GNSO Council member shall hold office during his or her regular term and until a successor has been selected and qualified or until that member resigns or is removed in accordance with these Bylaws.

Except in a "special circumstance," such as, but not limited to, meeting geographic or other diversity requirements defined in the Stakeholder Group charters, where no alternative representative is available to serve, no Council member may be selected to serve more than two consecutive terms, in such a special circumstance a Council member may serve one additional term. For these purposes, a person selected to fill a vacancy in a term shall not be deemed to have served that term. A former Council member who has served two consecutive terms must remain out of office for one full term prior to serving any subsequent term as Council member. A "special circumstance" is defined in the GNSO Operating Procedures.

3. A vacancy on the GNSO Council shall be deemed to exist in the case of the death, resignation, or removal of any member. Vacancies shall be filled for the unexpired term by the appropriate Nominating Committee or Stakeholder Group that selected the member holding the position before the vacancy occurred by giving the GNSO Secretariat written notice of its selection. Procedures for handling Stakeholder Group-appointed GNSO Council member vacancies, resignations, and removals are prescribed in the applicable Stakeholder Group Charter.

A GNSO Council member selected by the Nominating Committee may be removed for cause: i) stated by a three-fourths (3/4) vote of all members of the applicable House to which the Nominating Committee appointee is assigned; or ii) stated by a three-fourths (3/4) vote of all members of each House in the case of the non-voting Nominating Committee appointee (see [Section 3\(8\) of this Article](#)). Such removal shall be subject to reversal by the ICANN Board on appeal by the affected GNSO Council member.

4. The GNSO Council is responsible for managing the policy development process of the GNSO. It shall adopt such procedures (the "GNSO Operating Procedures") as it sees fit to carry out that responsibility, provided that such procedures are approved by a majority vote of each House. The GNSO Operating Procedures shall be effective upon the expiration of a twenty-one (21) day public comment period, and shall be subject to Board oversight and review. Until any modifications are recommended by the GNSO Council, the applicable procedures shall be as set forth in [Section 6 of this Article](#).
5. No more than one officer, director or employee of any particular corporation or other organization (including its subsidiaries and affiliates) shall serve on the GNSO Council at any given time.
6. The GNSO shall make selections to fill Seats 13 and 14 on the ICANN Board by written ballot or by action at a meeting. Each of the two voting Houses of the GNSO, as described in [Section 3\(8\) of this Article](#), shall make a selection to fill one of two ICANN Board seats, as outlined below; any such selection must have affirmative votes comprising sixty percent (60%) of all the respective voting House members:
  - a. the Contracted Party House shall select a representative to fill Seat 13; and
  - b. the Non-Contracted Party House shall select a representative to fill Seat 14

Election procedures are defined in the GNSO Operating Procedures.

Notification of the Board seat selections shall be given by the GNSO Chair in writing to the ICANN Secretary, consistent with Article VI, Sections [8\(4\)](#) and [12\(1\)](#).

7. The GNSO Council shall select the GNSO Chair for a term the GNSO Council specifies, but not longer than one year. Each House (as described in [Section 3.8 of this Article](#)) shall select a Vice-Chair, who will be a Vice-Chair of the whole of the GNSO Council, for a term the GNSO Council specifies, but not longer than one year. The procedures for selecting the Chair and any other officers are contained in the GNSO Operating Procedures. In the event that the GNSO Council has not elected a GNSO Chair by the end of the previous Chair's term, the Vice-Chairs will serve as Interim GNSO Co-Chairs until a successful election can be held.
8. Except as otherwise required in these Bylaws, for voting purposes, the GNSO Council (see [Section 3\(1\) of this Article](#)) shall be organized into a bicameral House structure as described below:

- a. the Contracted Parties House includes the Registries Stakeholder Group (three members), the Registrars Stakeholder Group (three members), and one voting member appointed by the ICANN Nominating Committee for a total of seven voting members; and
- b. the Non Contracted Parties House includes the Commercial Stakeholder Group (six members), the Non-Commercial Stakeholder Group (six members), and one voting member appointed by the ICANN Nominating Committee to that House for a total of thirteen voting members.

Except as otherwise specified in these Bylaws, each member of a voting House is entitled to cast one vote in each separate matter before the GNSO Council.

9. Except as otherwise specified in these Bylaws, [Annex A](#), [Annex A-1](#) and [Annex A-2](#) hereto, or the GNSO Operating Procedures, the default threshold to pass a GNSO Council motion or other voting action requires a simple majority vote of each House. The voting thresholds described below shall apply to the following GNSO actions:

- a. Create an Issues Report: requires an affirmative vote of more than one-fourth (1/4) vote of each House or majority of one House.
- b. Initiate a Policy Development Process ("PDP") Within Scope (as described in [Annex A](#)): requires an affirmative vote of more than one-third (1/3) of each House or more than two-thirds (2/3) of one House.
- c. Initiate a PDP Not Within Scope: requires an affirmative vote of GNSO Supermajority.
- d. Approve a PDP Team Charter for a PDP Within Scope: requires an affirmative vote of more than one-third (1/3) of each House or more than two-thirds (2/3) of one House.
- e. Approve a PDP Team Charter for a PDP Not Within Scope: requires an affirmative vote of a GNSO Supermajority.
- f. Changes to an Approved PDP Team Charter: For any PDP Team Charter approved under d. or e. above, the GNSO Council may approve an amendment to the Charter through a simple majority vote of each House.
- g. Terminate a PDP: Once initiated, and prior to the publication of a Final Report, the GNSO Council may terminate a PDP only for significant cause, upon a motion that passes with a GNSO Supermajority Vote in

favor of termination.

- h. Approve a PDP Recommendation Without a GNSO Supermajority: requires an affirmative vote of a majority of each House and further requires that one GNSO Council member representative of at least 3 of the 4 Stakeholder Groups supports the Recommendation.
- i. Approve a PDP Recommendation With a GNSO Supermajority: requires an affirmative vote of a GNSO Supermajority,
- j. Approve a PDP Recommendation Imposing New Obligations on Certain Contracting Parties: where an ICANN contract provision specifies that "a two-thirds vote of the council" demonstrates the presence of a consensus, the GNSO Supermajority vote threshold will have to be met or exceeded.
- k. Modification of Approved PDP Recommendation: Prior to Final Approval by the ICANN Board, an Approved PDP Recommendation may be modified or amended by the GNSO Council with a GNSO Supermajority vote.
- l. Initiation of an Expedited Policy Development Process (EPDP): requires an affirmative vote of a GNSO Supermajority.
- m. Approve an EPDP Team Charter: requires an affirmative vote of a GNSO Supermajority.
- n. Approval of EPDP recommendations: requires an affirmative vote of a GNSO Supermajority.
- o. Approve an EPDP Recommendation Imposing New Obligations on Certain Contracting Parties: where an ICANN contract provision specifies that "a two-thirds vote of the council" demonstrates the presence of a consensus, the GNSO Supermajority vote threshold will have to be met or exceeded.
- p. Initiation of a GNSO Guidance Process (GGP): requires an affirmative vote of more than one-third (1/3) of each House or more than two-thirds (2/3) of one House.
- q. Rejection of initiation of a GGP requested by the ICANN Board: requires an affirmative vote of a GNSO Supermajority.
- r. Approval of GGP recommendations: requires an affirmative vote of a GNSO Supermajority.
- s. A "GNSO Supermajority" shall mean: (a) two-thirds (2/3) of the Council members of each House, or (b) three-fourths (3/4) of one House and a

majority of the other House."

#### Section 4. STAFF SUPPORT AND FUNDING

1. A member of the ICANN staff shall be assigned to support the GNSO, whose work on substantive matters shall be assigned by the Chair of the GNSO Council, and shall be designated as the GNSO Staff Manager (Staff Manager).
2. ICANN shall provide administrative and operational support necessary for the GNSO to carry out its responsibilities. Such support shall not include an obligation for ICANN to fund travel expenses incurred by GNSO participants for travel to any meeting of the GNSO or for any other purpose. ICANN may, at its discretion, fund travel expenses for GNSO participants under any travel support procedures or guidelines that it may adopt from time to time.

#### Section 5. STAKEHOLDER GROUPS

1. The following Stakeholder Groups are hereby recognized as representative of a specific group of one or more Constituencies or interest groups and subject to the provisions of the [Transition Article XX, Section 5 of these Bylaws](#):
  - a. Registries Stakeholder Group representing all gTLD registries under contract to ICANN;
  - b. Registrars Stakeholder Group representing all registrars accredited by and under contract to ICANN;
  - c. Commercial Stakeholder Group representing the full range of large and small commercial entities of the Internet; and
  - d. Non-Commercial Stakeholder Group representing the full range of non-commercial entities of the Internet.
2. Each Stakeholder Group is assigned a specific number of Council seats in accordance with [Section 3\(1\) of this Article](#).
3. Each Stakeholder Group identified in [paragraph 1 of this Section](#) and each of its associated Constituencies, where applicable, shall maintain recognition with the ICANN Board. Recognition is granted by the Board based upon the extent to which, in fact, the entity represents the global interests of the stakeholder communities it purports to represent and operates to the maximum extent feasible in an open and transparent manner consistent with procedures designed to ensure fairness. Stakeholder Group and Constituency

Charters may be reviewed periodically as prescribed by the Board.

4. Any group of individuals or entities may petition the Board for recognition as a new or separate Constituency in the Non-Contracted Parties House. Any such petition shall contain:
  - a. A detailed explanation of why the addition of such a Constituency will improve the ability of the GNSO to carry out its policy-development responsibilities;
  - b. A detailed explanation of why the proposed new Constituency adequately represents, on a global basis, the stakeholders it seeks to represent;
  - c. A recommendation for organizational placement within a particular Stakeholder Group; and
  - d. A proposed charter that adheres to the principles and procedures contained in these Bylaws.

Any petition for the recognition of a new Constituency and the associated charter shall be posted for public comment.

5. The Board may create new Constituencies as described in [Section 5\(3\)](#) in response to such a petition, or on its own motion, if the Board determines that such action would serve the purposes of ICANN. In the event the Board is considering acting on its own motion it shall post a detailed explanation of why such action is necessary or desirable, set a reasonable time for public comment, and not make a final decision on whether to create such new Constituency until after reviewing all comments received. Whenever the Board posts a petition or recommendation for a new Constituency for public comment, the Board shall notify the GNSO Council and the appropriate Stakeholder Group affected and shall consider any response to that notification prior to taking action.

## **Section 6. POLICY DEVELOPMENT PROCESS**

The policy-development procedures to be followed by the GNSO shall be as stated in [Annex A](#) to these Bylaws. These procedures may be supplemented or revised in the manner stated in [Section 3\(4\) of this Article](#).

## **ARTICLE XI: ADVISORY COMMITTEES**

### **Section 1. GENERAL**

The Board may create one or more Advisory Committees in addition to those

set forth in this Article. Advisory Committee membership may consist of Directors only, Directors and non-directors, or non-directors only, and may also include non-voting or alternate members. Advisory Committees shall have no legal authority to act for ICANN, but shall report their findings and recommendations to the Board.

## **Section 2. SPECIFIC ADVISORY COMMITTEES**

There shall be at least the following Advisory Committees:

### **1. Governmental Advisory Committee**

- a. The Governmental Advisory Committee should consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN's policies and various laws and international agreements or where they may affect public policy issues.
- b. Membership in the Governmental Advisory Committee shall be open to all national governments. Membership shall also be open to Distinct Economies as recognized in international fora, and multinational governmental organizations and treaty organizations, on the invitation of the Governmental Advisory Committee through its Chair.
- c. The Governmental Advisory Committee may adopt its own charter and internal operating principles or procedures to guide its operations, to be published on the Website.
- d. The chair of the Governmental Advisory Committee shall be elected by the members of the Governmental Advisory Committee pursuant to procedures adopted by such members.
- e. Each member of the Governmental Advisory Committee shall appoint one accredited representative to the Committee. The accredited representative of a member must hold a formal official position with the member's public administration. The term "official" includes a holder of an elected governmental office, or a person who is employed by such government, public authority, or multinational governmental or treaty organization and whose primary function with such government, public authority, or organization is to develop or influence governmental or public policies.
- f. The Governmental Advisory Committee shall annually appoint one non-voting liaison to the ICANN Board of Directors, without limitation on reappointment, and shall annually appoint one non-voting liaison to the ICANN Nominating Committee.

- g. The Governmental Advisory Committee may designate a non-voting liaison to each of the Supporting Organization Councils and Advisory Committees, to the extent the Governmental Advisory Committee deems it appropriate and useful to do so.
- h. The Board shall notify the Chair of the Governmental Advisory Committee in a timely manner of any proposal raising public policy issues on which it or any of ICANN's supporting organizations or advisory committees seeks public comment, and shall take duly into account any timely response to that notification prior to taking action.
- i. The Governmental Advisory Committee may put issues to the Board directly, either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision to existing policies.
- j. The advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the formulation and adoption of policies. In the event that the ICANN Board determines to take an action that is not consistent with the Governmental Advisory Committee advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice. The Governmental Advisory Committee and the ICANN Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution.
- k. If no such solution can be found, the ICANN Board will state in its final decision the reasons why the Governmental Advisory Committee advice was not followed, and such statement will be without prejudice to the rights or obligations of Governmental Advisory Committee members with regard to public policy issues falling within their responsibilities.

## 2. Security and Stability Advisory Committee

- a. The role of the Security and Stability Advisory Committee ("SSAC") is to advise the ICANN community and Board on matters relating to the security and integrity of the Internet's naming and address allocation systems. It shall have the following responsibilities:
  - 1. To communicate on security matters with the Internet technical community and the operators and managers of critical DNS infrastructure services, to include the root name server operator community, the top-level domain registries and registrars, the operators of the reverse delegation trees such as in-addr.arpa and ip6.arpa, and others as events and developments dictate.

- The Committee shall gather and articulate requirements to offer to those engaged in technical revision of the protocols related to DNS and address allocation and those engaged in operations planning.
2. To engage in ongoing threat assessment and risk analysis of the Internet naming and address allocation services to assess where the principal threats to stability and security lie, and to advise the ICANN community accordingly. The Committee shall recommend any necessary audit activity to assess the current status of DNS and address allocation security in relation to identified risks and threats.
  3. To communicate with those who have direct responsibility for Internet naming and address allocation security matters (IETF, RSSAC, RIRs, name registries, etc.), to ensure that its advice on security risks, issues, and priorities is properly synchronized with existing standardization, deployment, operational, and coordination activities. The Committee shall monitor these activities and inform the ICANN community and Board on their progress, as appropriate.
  4. To report periodically to the Board on its activities.
  5. To make policy recommendations to the ICANN community and Board.
- b. The SSAC's chair and members shall be appointed by the Board. SSAC membership appointment shall be for a three-year term, commencing on 1 January and ending the second year thereafter on 31 December. The chair and members may be re-appointed, and there are no limits to the number of terms the chair or members may serve. The SSAC chair may provide recommendations to the Board regarding appointments to the SSAC. The SSAC chair shall stagger appointment recommendations so that approximately one-third (1/3) of the membership of the SSAC is considered for appointment or re-appointment each year. The Board shall also have to power to remove SSAC appointees as recommended by or in consultation with the SSAC. (Note: The first full term under this paragraph shall commence on 1 January 2011 and end on 31 December 2013. Prior to 1 January 2011, the SSAC shall be comprised as stated in the Bylaws as amended 25 June 2010, and the SSAC chair shall recommend the re-appointment of all current SSAC members to full or partial terms as appropriate to implement the provisions of this paragraph.)
- c. The SSAC shall annually appoint a non-voting liaison to the ICANN

Board according to [Section 9 of Article VI](#).

### 3. Root Server System Advisory Committee

- a. The role of the Root Server System Advisory Committee ("RSSAC") is to advise the ICANN community and Board on matters relating to the operation, administration, security, and integrity of the Internet's Root Server System. It shall have the following responsibilities:
  1. Communicate on matters relating to the operation of the Root Servers and their multiple instances with the Internet technical community and the ICANN community. The Committee shall gather and articulate requirements to offer to those engaged in technical revision of the protocols and best common practices related to the operation of DNS servers.
  2. Communicate on matters relating to the administration of the Root Zone with those who have direct responsibility for that administration. These matters include the processes and procedures for the production of the Root Zone File.
  3. Engage in ongoing threat assessment and risk analysis of the Root Server System and recommend any necessary audit activity to assess the current status of root servers and the root zone.
  4. Respond to requests for information or opinions from the ICANN Board of Directors.
  5. Report periodically to the Board on its activities.
  6. Make policy recommendations to the ICANN community and Board.
- b. The RSSAC shall be led by two co-chairs. The RSSAC's chairs and members shall be appointed by the Board.
  1. RSSAC membership appointment shall be for a three-year term, commencing on 1 January and ending the second year thereafter on 31 December. Members may be re-appointed, and there are no limits to the number of terms the members may serve. The RSSAC chairs shall provide recommendations to the Board regarding appointments to the RSSAC. If the board declines to appoint a person nominated by the RSSAC then it will provide the rationale for its decision. The RSSAC chairs shall stagger appointment recommendations so that approximately one-third (1/3) of the membership of the RSSAC is considered for appointment or re-appointment each year. The

Board shall also have to power to remove RSSAC appointees as recommended by or in consultation with the RSSAC. (Note: The first term under this paragraph shall commence on 1 July 2013 and end on 31 December 2015, and shall be considered a full term for all purposes. All other full terms under this paragraph shall begin on 1 January of the corresponding year. Prior to 1 July 2013, the RSSAC shall be comprised as stated in the Bylaws as amended 16 March 2012, and the RSSAC chairs shall recommend the re-appointment of all current RSSAC members to full or partial terms as appropriate to implement the provisions of this paragraph.)

2. The RSSAC shall recommend the appointment of the chairs to the board following a nomination process that it devises and documents.

c. The RSSAC shall annually appoint a non-voting liaison to the ICANN Board according to Section 9 of Article VI.

#### 4. At-Large Advisory Committee

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

b. The ALAC shall consist of (i) two members selected by each of the Regional At-Large Organizations ("RALOs") established according to paragraph 4(g) of this Section, and (ii) five members selected by the Nominating Committee. The five members selected by the Nominating Committee shall include one citizen of a country within each of the five Geographic Regions established according to [Section 5 of Article VI](#).

c. Subject to the provisions of the [Transition Article of these Bylaws](#), the regular terms of members of the ALAC shall be as follows:

1. The term of one member selected by each RALO shall begin at the conclusion of an ICANN annual meeting in an even-numbered year.

2. The term of the other member selected by each RALO shall begin at the conclusion of an ICANN annual meeting in an odd-

numbered year.

3. The terms of three of the members selected by the Nominating Committee shall begin at the conclusion of an annual meeting in an odd-numbered year and the terms of the other two members selected by the Nominating Committee shall begin at the conclusion of an annual meeting in an even-numbered year.
  4. The regular term of each member shall end at the conclusion of the second ICANN annual meeting after the term began.
- d. The Chair of the ALAC shall be elected by the members of the ALAC pursuant to procedures adopted by the Committee.
  - e. The ALAC shall, after consultation with each RALO, annually appoint five voting delegates (no two of whom shall be citizens of countries in the same Geographic Region, as defined according to [Section 5 of Article VI](#)) to the Nominating Committee.
  - f. Subject to the provisions of the [Transition Article of these Bylaws](#), the At-Large Advisory Committee may designate non-voting liaisons to each of the ccNSO Council and the GNSO Council.
  - g. There shall be one RALO for each Geographic Region established according to [Section 5 of Article VI](#). Each RALO shall serve as the main forum and coordination point for public input to ICANN in its Geographic Region and shall be a non-profit organization certified by ICANN according to criteria and standards established by the Board based on recommendations of the At-Large Advisory Committee. An organization shall become the recognized RALO for its Geographic Region upon entering a Memorandum of Understanding with ICANN addressing the respective roles and responsibilities of ICANN and the RALO regarding the process for selecting ALAC members and requirements of openness, participatory opportunities, transparency, accountability, and diversity in the RALO's structure and procedures, as well as criteria and standards for the RALO's constituent At-Large Structures.
  - h. Each RALO shall be comprised of self-supporting At-Large Structures within its Geographic Region that have been certified to meet the requirements of the RALO's Memorandum of Understanding with ICANN according to [paragraph 4\(i\) of this Section](#). If so provided by its Memorandum of Understanding with ICANN, a RALO may also include individual Internet users who are citizens or residents of countries within the RALO's Geographic Region.

## i. Membership in the At-Large Community

1. The criteria and standards for the certification of At-Large Structures within each Geographic Region shall be established by the Board based on recommendations from the ALAC and shall be stated in the Memorandum of Understanding between ICANN and the RALO for each Geographic Region.
2. The criteria and standards for the certification of At-Large Structures shall be established in such a way that participation by individual Internet users who are citizens or residents of countries within the Geographic Region (as defined in [Section 5 of Article VI](#)) of the RALO will predominate in the operation of each At-Large Structure within the RALO, while not necessarily excluding additional participation, compatible with the interests of the individual Internet users within the region, by others.
3. Each RALO's Memorandum of Understanding shall also include provisions designed to allow, to the greatest extent possible, every individual Internet user who is a citizen of a country within the RALO's Geographic Region to participate in at least one of the RALO's At-Large Structures.
4. To the extent compatible with these objectives, the criteria and standards should also afford to each RALO the type of structure that best fits the customs and character of its Geographic Region.
5. Once the criteria and standards have been established as provided in this Clause i, the ALAC, with the advice and participation of the RALO where the applicant is based, shall be responsible for certifying organizations as meeting the criteria and standards for At-Large Structure accreditation.
6. Decisions to certify or decertify an At-Large Structure shall be made as decided by the ALAC in its Rules of Procedure, save always that any changes made to the Rules of Procedure in respect of ALS applications shall be subject to review by the RALOs and by the ICANN Board.
7. Decisions as to whether to accredit, not to accredit, or disaccredit an At-Large Structure shall be subject to review according to procedures established by the Board.
8. On an ongoing basis, the ALAC may also give advice as to whether a prospective At-Large Structure meets the applicable criteria and standards.

- j. The ALAC is also responsible, working in conjunction with the RALOs, for coordinating the following activities:
1. Making a selection by the At-Large Community to fill Seat 15 on the Board. Notification of the At-Large Community's selection shall be given by the ALAC Chair in writing to the ICANN Secretary, consistent with Article VI, Sections 8(4) and 12(1).
  2. Keeping the community of individual Internet users informed about the significant news from ICANN;
  3. Distributing (through posting or otherwise) an updated agenda, news about ICANN, and information about items in the ICANN policy-development process;
  4. Promoting outreach activities in the community of individual Internet users;
  5. Developing and maintaining on-going information and education programs, regarding ICANN and its work;
  6. Establishing an outreach strategy about ICANN issues in each RALO's Region;
  7. Participating in the ICANN policy development processes and providing input and advice that accurately reflects the views of individual Internet users;
  8. Making public, and analyzing, ICANN's proposed policies and its decisions and their (potential) regional impact and (potential) effect on individuals in the region;
  9. Offering Internet-based mechanisms that enable discussions among members of At-Large structures; and
  10. Establishing mechanisms and processes that enable two-way communication between members of At-Large Structures and those involved in ICANN decision-making, so interested individuals can share their views on pending ICANN issues.

### **Section 3. PROCEDURES**

Each Advisory Committee shall determine its own rules of procedure and quorum requirements.

### **Section 4. TERM OF OFFICE**

The chair and each member of a committee shall serve until his or her

successor is appointed, or until such committee is sooner terminated, or until he or she is removed, resigns, or otherwise ceases to qualify as a member of the committee.

#### **Section 5. VACANCIES**

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

#### **Section 6. COMPENSATION**

Committee members shall receive no compensation for their services as a member of a committee. The Board may, however, authorize the reimbursement of actual and necessary expenses incurred by committee members, including Directors, performing their duties as committee members.

### **ARTICLE XI-A: OTHER ADVISORY MECHANISMS**

#### **Section 1. EXTERNAL EXPERT ADVICE**

1. Purpose. The purpose of seeking external expert advice is to allow the policy-development process within ICANN to take advantage of existing expertise that resides in the public or private sector but outside of ICANN. In those cases where there are relevant public bodies with expertise, or where access to private expertise could be helpful, the Board and constituent bodies should be encouraged to seek advice from such expert bodies or individuals.
2. Types of Expert Advisory Panels.
  - a. On its own initiative or at the suggestion of any ICANN body, the Board may appoint, or authorize the President to appoint, Expert Advisory Panels consisting of public or private sector individuals or entities. If the advice sought from such Panels concerns issues of public policy, the provisions of [Section 1\(3\)\(b\) of this Article](#) shall apply.
  - b. In addition, in accordance with [Section 1\(3\) of this Article](#), the Board may refer issues of public policy pertinent to matters within ICANN's mission to a multinational governmental or treaty organization.
3. Process for Seeking Advice-Public Policy Matters.
  - a. The Governmental Advisory Committee may at any time recommend that the Board seek advice concerning one or more issues of public policy from an external source, as set out

above.

- b. In the event that the Board determines, upon such a recommendation or otherwise, that external advice should be sought concerning one or more issues of public policy, the Board shall, as appropriate, consult with the Governmental Advisory Committee regarding the appropriate source from which to seek the advice and the arrangements, including definition of scope and process, for requesting and obtaining that advice.
  - c. The Board shall, as appropriate, transmit any request for advice from a multinational governmental or treaty organization, including specific terms of reference, to the Governmental Advisory Committee, with the suggestion that the request be transmitted by the Governmental Advisory Committee to the multinational governmental or treaty organization.
4. Process for Seeking and Advice-Other Matters. Any reference of issues not concerning public policy to an Expert Advisory Panel by the Board or President in accordance with [Section 1\(2\)\(a\) of this Article](#) shall be made pursuant to terms of reference describing the issues on which input and advice is sought and the procedures and schedule to be followed.
  5. Receipt of Expert Advice and its Effect. External advice pursuant to this Section shall be provided in written form. Such advice is advisory and not binding, and is intended to augment the information available to the Board or other ICANN body in carrying out its responsibilities.
  6. Opportunity to Comment. The Governmental Advisory Committee, in addition to the Supporting Organizations and other Advisory Committees, shall have an opportunity to comment upon any external advice received prior to any decision by the Board.

## **Section 2. TECHNICAL LIAISON GROUP**

1. Purpose. The quality of ICANN's work depends on access to complete and authoritative information concerning the technical standards that underlie ICANN's activities. ICANN's relationship to the organizations that produce these standards is therefore particularly important. The Technical Liaison Group (TLG) shall connect the Board with appropriate sources of technical advice on specific matters pertinent to ICANN's activities.
2. TLG Organizations. The TLG shall consist of four organizations: the

European Telecommunications Standards Institute (ETSI), the International Telecommunications Union's Telecommunication Standardization Sector (ITU-T), the World Wide Web Consortium (W3C), and the Internet Architecture Board (IAB).

3. Role. The role of the TLG organizations shall be to channel technical information and guidance to the Board and to other ICANN entities. This role has both a responsive component and an active "watchdog" component, which involve the following responsibilities:
  - a. In response to a request for information, to connect the Board or other ICANN body with appropriate sources of technical expertise. This component of the TLG role covers circumstances in which ICANN seeks an authoritative answer to a specific technical question. Where information is requested regarding a particular technical standard for which a TLG organization is responsible, that request shall be directed to that TLG organization.
  - b. As an ongoing "watchdog" activity, to advise the Board of the relevance and progress of technical developments in the areas covered by each organization's scope that could affect Board decisions or other ICANN actions, and to draw attention to global technical standards issues that affect policy development within the scope of ICANN's mission. This component of the TLG role covers circumstances in which ICANN is unaware of a new development, and would therefore otherwise not realize that a question should be asked.
4. TLG Procedures. The TLG shall not have officers or hold meetings, nor shall it provide policy advice to the Board as a committee (although TLG organizations may individually be asked by the Board to do so as the need arises in areas relevant to their individual charters). Neither shall the TLG debate or otherwise coordinate technical issues across the TLG organizations; establish or attempt to establish unified positions; or create or attempt to create additional layers or structures within the TLG for the development of technical standards or for any other purpose.
5. Technical Work with the IETF. The TLG shall have no involvement with the ICANN's work for the Internet Engineering Task Force (IETF), Internet Research Task Force, or the Internet Architecture Board (IAB), as described in the IETF-ICANN Memorandum of Understanding Concerning the Technical Work of the Internet Assigned Numbers Authority ratified by the Board on 10 March 2000.

6. Individual Technical Experts. Each TLG organization shall designate two individual technical experts who are familiar with the technical standards issues that are relevant to ICANN's activities. These 8 experts shall be available as necessary to determine, through an exchange of e-mail messages, where to direct a technical question from ICANN when ICANN does not ask a specific TLG organization directly.

## ARTICLE XII: BOARD AND TEMPORARY COMMITTEES

### Section 1. BOARD COMMITTEES

The Board may establish one or more committees of the Board, which shall continue to exist until otherwise determined by the Board. Only Directors may be appointed to a Committee of the Board. If a person appointed to a Committee of the Board ceases to be a Director, such person shall also cease to be a member of any Committee of the Board. Each Committee of the Board shall consist of two or more Directors. The Board may designate one or more Directors as alternate members of any such committee, who may replace any absent member at any meeting of the committee. Committee members may be removed from a committee at any time by a two-thirds (2/3) majority vote of all members of the Board; provided, however, that any Director or Directors which are the subject of the removal action shall not be entitled to vote on such an action or be counted as a member of the Board when calculating the required two-thirds (2/3) vote; and, provided further, however, that in no event shall a Director be removed from a committee unless such removal is approved by not less than a majority of all members of the Board.

### Section 2. POWERS OF BOARD COMMITTEES

1. The Board may delegate to Committees of the Board all legal authority of the Board except with respect to:
  - a. The filling of vacancies on the Board or on any committee;
  - b. The amendment or repeal of Bylaws or the Articles of Incorporation or the adoption of new Bylaws or Articles of Incorporation;
  - c. The amendment or repeal of any resolution of the Board which by its express terms is not so amendable or repealable;
  - d. The appointment of committees of the Board or the members thereof;
  - e. The approval of any self-dealing transaction, as such transactions are defined in Section 5233(a) of the CNPBCL;

- f. The approval of the annual budget required by [Article XVI](#); or
- g. The compensation of any officer described in [Article XIII](#).

2. The Board shall have the power to prescribe the manner in which proceedings of any Committee of the Board shall be conducted. In the absence of any such prescription, such committee shall have the power to prescribe the manner in which its proceedings shall be conducted. Unless these Bylaws, the Board or such committee shall otherwise provide, the regular and special meetings shall be governed by the provisions of [Article VI](#) applicable to meetings and actions of the Board. Each committee shall keep regular minutes of its proceedings and shall report the same to the Board from time to time, as the Board may require.

### **Section 3. TEMPORARY COMMITTEES**

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

## **ARTICLE XIII: OFFICERS**

### **Section 1. OFFICERS**

The officers of ICANN shall be a President (who shall serve as Chief Executive Officer), a Secretary, and a Chief Financial Officer. ICANN may also have, at the discretion of the Board, any additional officers that it deems appropriate. Any person, other than the President, may hold more than one office, except that no member of the Board (other than the President) shall simultaneously serve as an officer of ICANN.

### **Section 2. ELECTION OF OFFICERS**

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

### **Section 3. REMOVAL OF OFFICERS**

Any Officer may be removed, either with or without cause, by a two-thirds (2/3) majority vote of all the members of the Board. Should any vacancy occur in

any office as a result of death, resignation, removal, disqualification, or any other cause, the Board may delegate the powers and duties of such office to any Officer or to any Director until such time as a successor for the office has been elected.

#### **Section 4. PRESIDENT**

The President shall be the Chief Executive Officer (CEO) of ICANN in charge of all of its activities and business. All other officers and staff shall report to the President or his or her delegate, unless stated otherwise in these Bylaws. The President shall serve as an ex officio member of the Board, and shall have all the same rights and privileges of any Board member. The President shall be empowered to call special meetings of the Board as set forth herein, and shall discharge all other duties as may be required by these Bylaws and from time to time may be assigned by the Board.

#### **Section 5. SECRETARY**

The Secretary shall keep or cause to be kept the minutes of the Board in one or more books provided for that purpose, shall see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law, and in general shall perform all duties as from time to time may be prescribed by the President or the Board.

#### **Section 6. CHIEF FINANCIAL OFFICER**

The Chief Financial Officer ("CFO") shall be the chief financial officer of ICANN. If required by the Board, the CFO shall give a bond for the faithful discharge of his or her duties in such form and with such surety or sureties as the Board shall determine. The CFO shall have charge and custody of all the funds of ICANN and shall keep or cause to be kept, in books belonging to ICANN, full and accurate amounts of all receipts and disbursements, and shall deposit all money and other valuable effects in the name of ICANN in such depositories as may be designated for that purpose by the Board. The CFO shall disburse the funds of ICANN as may be ordered by the Board or the President and, whenever requested by them, shall deliver to the Board and the President an account of all his or her transactions as CFO and of the financial condition of ICANN. The CFO shall be responsible for ICANN's financial planning and forecasting and shall assist the President in the preparation of ICANN's annual budget. The CFO shall coordinate and oversee ICANN's funding, including any audits or other reviews of ICANN or its Supporting Organizations. The CFO shall be responsible for all other matters relating to the financial operation of ICANN.

#### **Section 7. ADDITIONAL OFFICERS**

In addition to the officers described above, any additional or assistant officers who are elected or appointed by the Board shall perform such duties as may be assigned to them by the President or the Board.

#### **Section 8. COMPENSATION AND EXPENSES**

The compensation of any Officer of ICANN shall be approved by the Board. Expenses incurred in connection with performance of their officer duties may be reimbursed to Officers upon approval of the President (in the case of Officers other than the President), by another Officer designated by the Board (in the case of the President), or the Board.

#### **Section 9. CONFLICTS OF INTEREST**

The Board, through the Board Governance Committee, shall establish a policy requiring a statement from each Officer not less frequently than once a year setting forth all business and other affiliations that relate in any way to the business and other affiliations of ICANN.

### **ARTICLE XIV: INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES, AND OTHER AGENTS**

ICANN shall, to maximum extent permitted by the CNPBCL, indemnify each of its agents against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with any proceeding arising by reason of the fact that any such person is or was an agent of ICANN, provided that the indemnified person's acts were done in good faith and in a manner that the indemnified person reasonably believed to be in ICANN's best interests and not criminal. For purposes of this Article, an "agent" of ICANN includes any person who is or was a Director, Officer, employee, or any other agent of ICANN (including a member of any Supporting Organization, any Advisory Committee, the Nominating Committee, any other ICANN committee, or the Technical Liaison Group) acting within the scope of his or her responsibility; or is or was serving at the request of ICANN as a Director, Officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise. The Board may adopt a resolution authorizing the purchase and maintenance of insurance on behalf of any agent of ICANN against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, whether or not ICANN would have the power to indemnify the agent against that liability under the provisions of this Article.

### **ARTICLE XV: GENERAL PROVISIONS**

### **Section 1. CONTRACTS**

The Board may authorize any Officer or Officers, agent or agents, to enter into any contract or execute or deliver any instrument in the name of and on behalf of ICANN, and such authority may be general or confined to specific instances. In the absence of a contrary Board authorization, contracts and instruments may only be executed by the following Officers: President, any Vice President, or the CFO. Unless authorized or ratified by the Board, no other Officer, agent, or employee shall have any power or authority to bind ICANN or to render it liable for any debts or obligations.

### **Section 2. DEPOSITS**

All funds of ICANN not otherwise employed shall be deposited from time to time to the credit of ICANN in such banks, trust companies, or other depositories as the Board, or the President under its delegation, may select.

### **Section 3. CHECKS**

All checks, drafts, or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of ICANN shall be signed by such Officer or Officers, agent or agents, of ICANN and in such a manner as shall from time to time be determined by resolution of the Board.

### **Section 4. LOANS**

No loans shall be made by or to ICANN and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Board. Such authority may be general or confined to specific instances; provided, however, that no loans shall be made by ICANN to its Directors or Officers.

## **ARTICLE XVI: FISCAL MATTERS**

### **Section 1. ACCOUNTING**

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

### **Section 2. AUDIT**

At the end of the fiscal year, the books of ICANN shall be closed and audited by certified public accountants. The appointment of the fiscal auditors shall be the responsibility of the Board.

### **Section 3. ANNUAL REPORT AND ANNUAL STATEMENT**

The Board shall publish, at least annually, a report describing its activities, including an audited financial statement and a description of any payments made by ICANN to Directors (including reimbursements of expenses). ICANN shall cause the annual report and the annual statement of certain transactions as required by the CNPBCL to be prepared and sent to each member of the Board and to such other persons as the Board may designate, no later than one hundred twenty (120) days after the close of ICANN's fiscal year.

#### **Section 4. ANNUAL BUDGET**

At least forty-five (45) days prior to the commencement of each fiscal year, the President shall prepare and submit to the Board, a proposed annual budget of ICANN for the next fiscal year, which shall be posted on the Website. The proposed budget shall identify anticipated revenue sources and levels and shall, to the extent practical, identify anticipated material expense items by line item. The Board shall adopt an annual budget and shall publish the adopted Budget on the Website.

#### **Section 5. FEES AND CHARGES**

The Board may set fees and charges for the services and benefits provided by ICANN, with the goal of fully recovering the reasonable costs of the operation of ICANN and establishing reasonable reserves for future expenses and contingencies reasonably related to the legitimate activities of ICANN. Such fees and charges shall be fair and equitable, shall be published for public comment prior to adoption, and once adopted shall be published on the Website in a sufficiently detailed manner so as to be readily accessible.

### **ARTICLE XVII: MEMBERS**

ICANN shall not have members, as defined in the California Nonprofit Public Benefit Corporation Law ("CNPBCL"), notwithstanding the use of the term "Member" in these Bylaws, in any ICANN document, or in any action of the ICANN Board or staff.

### **ARTICLE XVIII: OFFICES AND SEAL**

#### **Section 1. OFFICES**

The principal office for the transaction of the business of ICANN shall be in the County of Los Angeles, State of California, United States of America. ICANN may also have an additional office or offices within or outside the United States of America as it may from time to time establish.

## Section 2. SEAL

The Board may adopt a corporate seal and use the same by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

## ARTICLE XIX: AMENDMENTS

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

## ARTICLE XX: TRANSITION ARTICLE

### Section 1. PURPOSE

This Transition Article sets forth the provisions for the transition from the processes and structures defined by the ICANN Bylaws, as amended and restated on 29 October 1999 and amended through 12 February 2002 (the "Old Bylaws"), to the processes and structures defined by the Bylaws of which this Article is a part (the "New Bylaws"). [Explanatory Note (dated 10 December 2009): For Section 5(3) of this Article, reference to the Old Bylaws refers to the Bylaws as amended and restated through to 20 March 2009.]

### Section 2. BOARD OF DIRECTORS

1. For the period beginning on the adoption of this Transition Article and ending on the Effective Date and Time of the New Board, as defined in [paragraph 5 of this Section 2](#), the Board of Directors of the Corporation ("Transition Board") shall consist of the members of the Board who would have been Directors under the Old Bylaws immediately after the conclusion of the annual meeting in 2002, except that those At-Large members of the Board under the Old Bylaws who elect to do so by notifying the Secretary of the Board on 15 December 2002 or in writing or by e-mail no later than 23 December 2002 shall also serve as members of the Transition Board. Notwithstanding the provisions of [Article VI, Section 12 of the New Bylaws](#), vacancies on the Transition Board shall not be filled. The Transition Board shall not have liaisons as provided by [Article VI, Section 9 of the New Bylaws](#). The Board Committees existing on the date of adoption of this Transition Article shall continue in existence, subject to any change in Board Committees or their membership that the Transition Board may adopt by resolution.
2. The Transition Board shall elect a Chair and Vice-Chair to serve until

the Effective Date and Time of the New Board.

3. The "New Board" is that Board described in [Article VI, Section 2\(1\) of the New Bylaws](#).
4. Promptly after the adoption of this Transition Article, a Nominating Committee shall be formed including, to the extent feasible, the delegates and liaisons described in [Article VII, Section 2 of the New Bylaws](#), with terms to end at the conclusion of the ICANN annual meeting in 2003. The Nominating Committee shall proceed without delay to select Directors to fill Seats 1 through 8 on the New Board, with terms to conclude upon the commencement of the first regular terms specified for those Seats in [Article VI, Section 8\(1\)\(a\)-\(c\) of the New Bylaws](#), and shall give the ICANN Secretary written notice of that selection.
5. The Effective Date and Time of the New Board shall be a time, as designated by the Transition Board, during the first regular meeting of ICANN in 2003 that begins not less than seven calendar days after the ICANN Secretary has received written notice of the selection of Directors to fill at least ten of Seats 1 through 14 on the New Board. As of the Effective Date and Time of the New Board, it shall assume from the Transition Board all the rights, duties, and obligations of the ICANN Board of Directors. Subject to Section 4 of this Article, the Directors ([Article VI, Section 2\(1\)\(a\)-\(d\)](#)) and non-voting liaisons ([Article VI, Section 9](#)) as to which the ICANN Secretary has received notice of selection shall, along with the President ([Article VI, Section 2\(1\)\(e\)](#)), be seated upon the Effective Date and Time of the New Board, and thereafter any additional Directors and non-voting liaisons shall be seated upon the ICANN Secretary's receipt of notice of their selection.
6. The New Board shall elect a Chairman and Vice-Chairman as its first order of business. The terms of those Board offices shall expire at the end of the annual meeting in 2003.
7. Committees of the Board in existence as of the Effective Date and Time of the New Board shall continue in existence according to their existing charters, but the terms of all members of those committees shall conclude at the Effective Date and Time of the New Board. Temporary committees in existence as of the Effective Date and Time of the New Board shall continue in existence with their existing charters and membership, subject to any change the New Board may adopt by resolution.
8. In applying the term-limitation provision of [Section 8\(5\) of Article VI](#), a Director's service on the Board before the Effective Date and Time of

the New Board shall count as one term.

### **Section 3. ADDRESS SUPPORTING ORGANIZATION**

The Address Supporting Organization shall continue in operation according to the provisions of the [Memorandum of Understanding originally entered on 18 October 1999](#) between ICANN and a group of regional Internet registries (RIRs), and [amended in October 2000](#), until a replacement Memorandum of Understanding becomes effective. Promptly after the adoption of this Transition Article, the Address Supporting Organization shall make selections, and give the ICANN Secretary written notice of those selections, of:

1. Directors to fill Seats 9 and 10 on the New Board, with terms to conclude upon the commencement of the first regular terms specified for each of those Seats in [Article VI, Section 8\(1\)\(d\) and \(e\) of the New Bylaws](#); and
2. the delegate to the Nominating Committee selected by the Council of the Address Supporting Organization, as called for in [Article VII, Section 2\(8\)\(f\) of the New Bylaws](#).

With respect to the ICANN Directors that it is entitled to select, and taking into account the need for rapid selection to ensure that the New Board becomes effective as soon as possible, the Address Supporting Organization may select those Directors from among the persons it previously selected as ICANN Directors pursuant to the Old Bylaws. To the extent the Address Supporting Organization does not provide the ICANN Secretary written notice, on or before 31 March 2003, of its selections for Seat 9 and Seat 10, the Address Supporting Organization shall be deemed to have selected for Seat 9 the person it selected as an ICANN Director pursuant to the Old Bylaws for a term beginning in 2001 and for Seat 10 the person it selected as an ICANN Director pursuant to the Old Bylaws for a term beginning in 2002.

### **Section 4. COUNTRY-CODE NAMES SUPPORTING ORGANIZATION**

1. Upon the enrollment of thirty ccTLD managers (with at least four within each Geographic Region) as members of the ccNSO, written notice shall be posted on the Website. As soon as feasible after that notice, the members of the initial ccNSO Council to be selected by the ccNSO members shall be selected according to the procedures stated in [Article IX, Section 4\(8\) and \(9\)](#). Upon the completion of that selection process, a written notice that the ccNSO Council has been constituted shall be posted on the Website. Three ccNSO Council members shall be selected by the ccNSO members within each Geographic Region, with one member to serve a term that ends upon the conclusion of the

first ICANN annual meeting after the ccNSO Council is constituted, a second member to serve a term that ends upon the conclusion of the second ICANN annual meeting after the ccNSO Council is constituted, and the third member to serve a term that ends upon the conclusion of the third ICANN annual meeting after the ccNSO Council is constituted. (The definition of "ccTLD manager" stated in [Article IX, Section 4\(1\)](#) and the definitions stated in [Article IX, Section 4\(4\)](#) shall apply within this Section 4 of Article XX.)

2. After the adoption of [Article IX of these Bylaws](#), the Nominating Committee shall select the three members of the ccNSO Council described in [Article IX, Section 3\(1\)\(b\)](#). In selecting three individuals to serve on the ccNSO Council, the Nominating Committee shall designate one to serve a term that ends upon the conclusion of the first ICANN annual meeting after the ccNSO Council is constituted, a second member to serve a term that ends upon the conclusion of the second ICANN annual meeting after the ccNSO Council is constituted, and the third member to serve a term that ends upon the conclusion of the third ICANN annual meeting after the ccNSO Council is constituted. The three members of the ccNSO Council selected by the Nominating Committee shall not take their seats before the ccNSO Council is constituted.
3. Upon the ccNSO Council being constituted, the At-Large Advisory Committee and the Governmental Advisory Committee may designate one liaison each to the ccNSO Council, as provided by [Article IX, Section 3\(2\)\(a\) and \(b\)](#).
4. Upon the ccNSO Council being constituted, the Council may designate Regional Organizations as provided in [Article IX, Section 5](#). Upon its designation, a Regional Organization may appoint a liaison to the ccNSO Council.
5. Until the ccNSO Council is constituted, Seats 11 and 12 on the New Board shall remain vacant. Promptly after the ccNSO Council is constituted, the ccNSO shall, through the ccNSO Council, make selections of Directors to fill Seats 11 and 12 on the New Board, with terms to conclude upon the commencement of the next regular term specified for each of those Seats in [Article VI, Section 8\(1\)\(d\) and \(f\) of the New Bylaws](#), and shall give the ICANN Secretary written notice of its selections.
6. Until the ccNSO Council is constituted, the delegate to the Nominating Committee established by the New Bylaws designated to be selected by the ccNSO shall be appointed by the Transition Board or New Board, depending on which is in existence at the time any particular

appointment is required, after due consultation with members of the ccTLD community. Upon the ccNSO Council being constituted, the delegate to the Nominating Committee appointed by the Transition Board or New Board according to this Section 4(9) then serving shall remain in office, except that the ccNSO Council may replace that delegate with one of its choosing within three months after the conclusion of ICANN's annual meeting, or in the event of a vacancy. Subsequent appointments of the Nominating Committee delegate described in [Article VII, Section 2\(8\)\(c\)](#) shall be made by the ccNSO Council.

## **Section 5. GENERIC NAMES SUPPORTING ORGANIZATION**

1. The Generic Names Supporting Organization ("GNSO"), upon the adoption of this Transition Article, shall continue its operations; however, it shall be restructured into four new Stakeholder Groups which shall represent, organizationally, the former Constituencies of the GNSO, subject to ICANN Board approval of each individual Stakeholder Group Charter:
  - a. The gTLD Registries Constituency shall be assigned to the Registries Stakeholder Group;
  - b. The Registrars Constituency shall be assigned to the Registrars Stakeholder Group;
  - c. The Business Constituency shall be assigned to the Commercial Stakeholder Group;
  - d. The Intellectual Property Constituency shall be assigned to the Commercial Stakeholder Group;
  - e. The Internet Services Providers Constituency shall be assigned to the Commercial Stakeholder Group; and
  - f. The Non-Commercial Users Constituency shall be assigned to the Non-Commercial Stakeholder Group.
  
2. Each GNSO Constituency described in paragraph 1 of this subsection shall continue operating substantially as before and no Constituency official, working group, or other activity shall be changed until further action of the Constituency, provided that each GNSO Constituency described in paragraph 1 (c-f) shall submit to the ICANN Secretary a new or revised Charter inclusive of its operating procedures, adopted according to the Constituency's processes and consistent with these Bylaws Amendments, no later than the ICANN meeting in October 2009, or another date as the Board may designate by resolution.

3. Prior to the commencement of the ICANN meeting in October 2009, or another date the Board may designate by resolution, the GNSO Council shall consist of its current Constituency structure and officers as described in [Article X, Section 3\(1\) of the Bylaws](#) (as amended and restated on 29 October 1999 and amended through 20 March 2009 (the "Old Bylaws")). Thereafter, the composition of the GNSO Council shall be as provided in these Bylaws, as they may be amended from time to time. All committees, task forces, working groups, drafting committees, and similar groups established by the GNSO Council and in existence immediately before the adoption of this Transition Article shall continue in existence with the same charters, membership, and activities, subject to any change by action of the GNSO Council or ICANN Board.
4. Beginning with the commencement of the ICANN Meeting in October 2009, or another date the Board may designate by resolution (the "Effective Date of the Transition"), the GNSO Council seats shall be assigned as follows:
  - a. The three seats currently assigned to the Registry Constituency shall be reassigned as three seats of the Registries Stakeholder Group;
  - b. The three seats currently assigned to the Registrar Constituency shall be reassigned as three seats of the Registrars Stakeholder Group;
  - c. The three seats currently assigned to each of the Business Constituency, the Intellectual Property Constituency, and the Internet Services Provider Constituency (nine total) shall be decreased to be six seats of the Commercial Stakeholder Group;
  - d. The three seats currently assigned to the Non-Commercial Users Constituency shall be increased to be six seats of the Non-Commercial Stakeholder Group;
  - e. The three seats currently selected by the Nominating Committee shall be assigned by the Nominating Committee as follows: one voting member to the Contracted Party House, one voting member to the Non-Contracted Party House, and one non-voting member assigned to the GNSO Council at large.

Representatives on the GNSO Council shall be appointed or elected consistent with the provisions in each applicable Stakeholder Group Charter, approved by the Board, and sufficiently in advance of the

October 2009 ICANN Meeting that will permit those representatives to act in their official capacities at the start of said meeting.

5. The GNSO Council, as part of its Restructure Implementation Plan, will document: (a) how vacancies, if any, will be handled during the transition period; (b) for each Stakeholder Group, how each assigned Council seat to take effect at the 2009 ICANN annual meeting will be filled, whether through a continuation of an existing term or a new election or appointment; (c) how it plans to address staggered terms such that the new GNSO Council preserves as much continuity as reasonably possible; and (d) the effect of Bylaws term limits on each Council member.
6. As soon as practical after the commencement of the ICANN meeting in October 2009, or another date the Board may designate by resolution, the GNSO Council shall, in accordance with Article X, Section 3(7) and its GNSO Operating Procedures, elect officers and give the ICANN Secretary written notice of its selections.

## **Section 6. PROTOCOL SUPPORTING ORGANIZATION**

The Protocol Supporting Organization referred to in the Old Bylaws is discontinued.

## **Section 7. ADVISORY COMMITTEES AND TECHNICAL LIAISON GROUP**

1. Upon the adoption of the New Bylaws, the Governmental Advisory Committee shall continue in operation according to its existing operating principles and practices, until further action of the committee. The Governmental Advisory Committee may designate liaisons to serve with other ICANN bodies as contemplated by the New Bylaws by providing written notice to the ICANN Secretary. Promptly upon the adoption of this Transition Article, the Governmental Advisory Committee shall notify the ICANN Secretary of the person selected as its delegate to the Nominating Committee, as set forth in Article VII, Section 2 of the New Bylaws.
2. The organizations designated as members of the Technical Liaison Group under Article XI-A, Section 2(2) of the New Bylaws shall each designate the two individual technical experts described in Article XI-A, Section 2(6) of the New Bylaws, by providing written notice to the ICANN Secretary. As soon as feasible, the delegate from the Technical Liaison Group to the Nominating Committee shall be selected according to Article XI-A, Section 2(7) of the New Bylaws.

3. Upon the adoption of the New Bylaws, the [Security and Stability Advisory Committee](#) shall continue in operation according to its existing operating principles and practices, until further action of the committee. Promptly upon the adoption of this Transition Article, the [Security and Stability Advisory Committee](#) shall notify the [ICANN Secretary](#) of the person selected as its delegate to the Nominating Committee, as set forth in [Article VII, Section 2\(4\) of the New Bylaws](#).
4. Upon the adoption of the New Bylaws, the [Root Server System Advisory Committee](#) shall continue in operation according to its existing operating principles and practices, until further action of the committee. Promptly upon the adoption of this Transition Article, the [Root Server Advisory Committee](#) shall notify the [ICANN Secretary](#) of the person selected as its delegate to the Nominating Committee, as set forth in [Article VII, Section 2\(3\) of the New Bylaws](#).
5. [At-Large Advisory Committee](#)
  - a. There shall exist an [Interim At-Large Advisory Committee](#) until such time as [ICANN](#) recognizes, through the entry of a Memorandum of Understanding, all of the Regional At-Large Organizations (RALOs) identified in [Article XI, Section 2\(4\) of the New Bylaws](#). The [Interim At-Large Advisory Committee](#) shall be composed of (i) ten individuals (two from each [ICANN](#) region) selected by the [ICANN](#) Board following nominations by the At-Large Organizing Committee and (ii) five additional individuals (one from each [ICANN](#) region) selected by the initial Nominating Committee as soon as feasible in accordance with the principles established in [Article VII, Section 5 of the New Bylaws](#). The initial Nominating Committee shall designate two of these individuals to serve terms until the conclusion of the [ICANN](#) annual meeting in 2004 and three of these individuals to serve terms until the conclusion of the [ICANN](#) annual meeting in 2005.
  - b. Upon the entry of each RALO into such a Memorandum of Understanding, that entity shall be entitled to select two persons who are citizens and residents of that Region to be members of the [At-Large Advisory Committee](#) established by [Article XI, Section 2\(4\) of the New Bylaws](#). Upon the entity's written notification to the [ICANN](#) Secretary of such selections, those persons shall immediately assume the seats held until that notification by the [Interim At-Large Advisory Committee](#) members previously selected by the Board from the RALO's region.

- c. Upon the seating of persons selected by all five RALOs, the Interim At-Large Advisory Committee shall become the At-Large Advisory Committee, as established by [Article XI, Section 2\(4\) of the New Bylaws](#). The five individuals selected to the Interim At-Large Advisory Committee by the Nominating Committee shall become members of the At-Large Advisory Committee for the remainder of the terms for which they were selected.
- d. Promptly upon its creation, the Interim At-Large Advisory Committee shall notify the ICANN Secretary of the persons selected as its delegates to the Nominating Committee, as set forth in [Article VII, Section 2\(6\) of the New Bylaws](#).

### **Section 8. OFFICERS**

ICANN officers (as defined in [Article XIII of the New Bylaws](#)) shall be elected by the then-existing Board of ICANN at the annual meeting in 2002 to serve until the annual meeting in 2003.

### **Section 9. GROUPS APPOINTED BY THE PRESIDENT**

Notwithstanding the adoption or effectiveness of the New Bylaws, task forces and other groups appointed by the ICANN President shall continue unchanged in membership, scope, and operation until changes are made by the President.

### **Section 10. CONTRACTS WITH ICANN**

Notwithstanding the adoption or effectiveness of the New Bylaws, all agreements, including employment and consulting agreements, entered by ICANN shall continue in effect according to their terms.

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## **Annex A: GNSO Policy Development Process**

The following process shall govern the GNSO policy development process ("PDP") until such time as modifications are recommended to and approved by the ICANN Board of Directors ("Board"). The role of the GNSO is outlined in Article X of these Bylaws. If the GNSO is conducting activities that are not intended to result in a Consensus Policy, the Council may act through other processes.

### **Section 1. Required Elements of a Policy Development Process**

The following elements are required at a minimum to form Consensus Policies as defined within ICANN contracts, and any other policies for which the GNSO Council requests application of this Annex A:

- a. Final Issue Report requested by the Board, the GNSO Council ("Council") or Advisory Committee, which should include at a minimum a) the proposed issue raised for consideration, b) the identity of the party submitting the issue, and c) how that party is affected by the issue;
- b. Formal initiation of the Policy Development Process by the Council;
- c. Formation of a Working Group or other designated work method;
- d. Initial Report produced by a Working Group or other designated work method;
- e. Final Report produced by a Working Group, or other designated work method, and forwarded to the Council for deliberation;
- f. Council approval of PDP Recommendations contained in the Final Report, by the required thresholds;
- g. PDP Recommendations and Final Report shall be forwarded to the Board through a Recommendations Report approved by the Council]; and
- h. Board approval of PDP Recommendations.

## Section 2. **Policy Development Process Manual**

The GNSO shall maintain a Policy Development Process Manual (PDP Manual) within the operating procedures of the GNSO maintained by the GNSO Council. The PDP Manual shall contain specific additional guidance on completion of all elements of a PDP, including those elements that are not otherwise defined in these Bylaws. The PDP Manual and any amendments thereto are subject to a twenty-one (21) day public comment period at minimum, as well as Board oversight and review, as specified at Article X, Section 3.6.

## Section 3. **Requesting an Issue Report**

*Board Request.* The Board may request an Issue Report by instructing the GNSO Council ("Council") to begin the process outlined the PDP Manual. In the event the Board makes a request for an Issue Report, the Board should provide a mechanism by which the GNSO Council can consult with the Board to provide information on the scope, timing, and priority of the request for an

Issue Report.

*Council Request.* The GNSO Council may request an Issue Report by a vote of at least one-fourth (1/4) of the members of the Council of each House or a majority of one House.

*Advisory Committee Request.* An Advisory Committee may raise an issue for policy development by action of such committee to request an Issue Report, and transmission of that request to the Staff Manager and GNSO Council.

#### Section 4. **Creation of an Issue Report**

Within forty-five (45) calendar days after receipt of either (i) an instruction from the Board; (ii) a properly supported motion from the GNSO Council; or (iii) a properly supported motion from an Advisory Committee, the Staff Manager will create a report (a "Preliminary Issue Report"). In the event the Staff Manager determines that more time is necessary to create the Preliminary Issue Report, the Staff Manager may request an extension of time for completion of the Preliminary Issue Report.

The following elements should be considered in the Issue Report:

- a. The proposed issue raised for consideration;
- b. The identity of the party submitting the request for the Issue Report;
- c. How that party is affected by the issue, if known;
- d. Support for the issue to initiate the PDP, if known;
- e. The opinion of the ICANN General Counsel regarding whether the issue proposed for consideration within the Policy Development Process is properly within the scope of the ICANN's mission, policy process and more specifically the role of the GNSO as set forth in the Bylaws.
- f. The opinion of ICANN Staff as to whether the Council should initiate the PDP on the issue

Upon completion of the Preliminary Issue Report, the Preliminary Issue Report shall be posted on the ICANN website for a public comment period that complies with the designated practice for public comment periods within ICANN.

The Staff Manager is responsible for drafting a summary and analysis of the public comments received on the Preliminary Issue Report and producing a

Final Issue Report based upon the comments received. The Staff Manager should forward the Final Issue Report, along with any summary and analysis of the public comments received, to the Chair of the GNSO Council for consideration for initiation of a PDP.

#### Section 5. **Initiation of the PDP**

The Council may initiate the PDP as follows:

*Board Request*: If the Board requested an Issue Report, the Council, within the timeframe set forth in the PDP Manual, shall initiate a PDP. No vote is required for such action.

*GNSO Council or Advisory Committee Requests*: The Council may only initiate the PDP by a vote of the Council. Initiation of a PDP requires a vote as set forth in [Article X, Section 3, paragraph 9\(b\) and \(c\)](#) in favor of initiating the PDP.

#### Section 6. **Reports**

An Initial Report should be delivered to the GNSO Council and posted for a public comment period that complies with the designated practice for public comment periods within ICANN, which time may be extended in accordance with the PDP Manual. Following the review of the comments received and, if required, additional deliberations, a Final Report shall be produced for transmission to the Council.

#### Section 7. **Council Deliberation**

Upon receipt of a Final Report, whether as the result of a working group or otherwise, the Council chair will (i) distribute the Final Report to all Council members; and (ii) call for Council deliberation on the matter in accordance with the PDP Manual.

The Council approval process is set forth in [Article X, Section 3, paragraph 9\(d\) through \(g\)](#), as supplemented by the PDP Manual.

#### Section 8. **Preparation of the Board Report**

If the PDP recommendations contained in the Final Report are approved by the GNSO Council, a Recommendations Report shall be approved by the GNSO Council for delivery to the ICANN Board.

#### Section 9. **Board Approval Processes**

The Board will meet to discuss the GNSO Council recommendation as soon as feasible, but preferably not later than the second meeting after receipt of the Board Report from the Staff Manager. Board deliberation on the PDP Recommendations contained within the Recommendations Report shall proceed as follows:

- a. Any PDP Recommendations approved by a GNSO Supermajority Vote shall be adopted by the Board unless, by a vote of more than two-thirds (2/3) of the Board, the Board determines that such policy is not in the best interests of the ICANN community or ICANN. If the GNSO Council recommendation was approved by less than a GNSO Supermajority Vote, a majority vote of the Board will be sufficient to determine that such policy is not in the best interests of the ICANN community or ICANN.
- b. In the event that the Board determines, in accordance with paragraph a above, that the policy recommended by a GNSO Supermajority Vote or less than a GNSO Supermajority vote is not in the best interests of the ICANN community or ICANN (the Corporation), the Board shall (i) articulate the reasons for its determination in a report to the Council (the "Board Statement"); and (ii) submit the Board Statement to the Council.
- c. The Council shall review the Board Statement for discussion with the Board as soon as feasible after the Council's receipt of the Board Statement. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board will discuss the Board Statement.
- d. At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its recommendation, and communicate that conclusion (the "Supplemental Recommendation") to the Board, including an explanation for the then-current recommendation. In the event that the Council is able to reach a GNSO Supermajority Vote on the Supplemental Recommendation, the Board shall adopt the recommendation unless more than two-thirds (2/3) of the Board determines that such policy is not in the interests of the ICANN community or ICANN. For any Supplemental Recommendation approved by less than a GNSO Supermajority Vote, a majority vote of the Board shall be sufficient to determine that the policy in the Supplemental Recommendation is not in the best interest of the ICANN community or ICANN.

#### Section 10. Implementation of Approved Policies

Upon a final decision of the Board adopting the policy, the Board shall, as appropriate, give authorization or direction to ICANN staff to work with the GNSO Council to create an implementation plan based upon the implementation recommendations identified in the Final Report, and to implement the policy. The GNSO Council may, but is not required to, direct the creation of an implementation review team to assist in implementation of the policy.

#### Section 11. **Maintenance of Records**

Throughout the PDP, from policy suggestion to a final decision by the Board, ICANN will maintain on the Website, a status web page detailing the progress of each PDP issue. Such status page will outline the completed and upcoming steps in the PDP process, and contain links to key resources (e.g. Reports, Comments Fora, WG Discussions, etc.).

#### Section 12. **Additional Definitions**

"Comment Site", "Comment Forum", "Comments For a" and "Website" refer to one or more websites designated by ICANN on which notifications and comments regarding the PDP will be posted.

"Supermajority Vote" means a vote of more than sixty-six (66) percent of the members present at a meeting of the applicable body, with the exception of the GNSO Council.

"Staff Manager" means an ICANN staff person(s) who manages the PDP.

"GNSO Supermajority Vote" shall have the meaning set forth in the Bylaws.

#### Section 13. **Applicability**

The procedures of this Annex A shall be applicable to all requests for Issue Reports and PDPs initiated after 8 December 2011. For all ongoing PDPs initiated prior to 8 December 2011, the Council shall determine the feasibility of transitioning to the procedures set forth in this Annex A for all remaining steps within the PDP. If the Council determines that any ongoing PDP cannot be feasibly transitioned to these updated procedures, the PDP shall be concluded according to the procedures set forth in Annex A in force on 7 December 2011.

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## **Annex A-1: GNSO Expedited Policy Development Process**

The following process shall govern the specific instances where the GNSO Council invokes the GNSO Expedited Policy Development Process ("EPDP"). The GNSO Council may invoke the EPDP in the following limited circumstances: (1) to address a narrowly defined policy issue that was identified and scoped after either the adoption of a GNSO policy recommendation by the ICANN Board or the implementation of such an adopted recommendation; or (2) to create new or additional recommendations for a specific policy issue that had been substantially scoped previously such that extensive, pertinent background information already exists, e.g. (a) in an Issue Report for a possible PDP that was not initiated; (b) as part of a previous PDP that was not completed; or (c) through other projects such as a GGP. The following process shall be in place until such time as modifications are recommended to and approved by the ICANN Board of Directors. Where a conflict arises in relation to an EPDP between the PDP Manual (see Annex 2 of the GNSO Operating Procedures) and the procedures described in this Annex A-1, the provisions of this Annex A-1 shall prevail.

The role of the GNSO is outlined in Article X of these Bylaws. Provided the Council believes and documents via Council vote that the above-listed criteria are met, an EPDP may be initiated to recommend an amendment to an existing Consensus Policy; however, in all cases where the GNSO is conducting policy-making activities that do not meet the above criteria as documented in a Council vote, the Council should act through a Policy Development Process (see Annex A).

#### **Section 1. Required Elements of a GNSO Expedited Policy Development Process**

The following elements are required at a minimum to develop expedited GNSO policy recommendations, including recommendations that could result in amendments to an existing Consensus Policy, as part of a GNSO Expedited Policy Development Process:

- a. Formal initiation of the GNSO Expedited Policy Development Process by the GNSO Council, including an EPDP scoping document;
- b. Formation of an EPDP Team or other designated work method;
- c. Initial Report produced by an EPDP Team or other designated work method;
- d. Final EPDP Policy Recommendation(s) Report produced by an EPDP Team, or other designated work method, and forwarded to the Council for deliberation;
- e. GNSO Council approval of EPDP Policy Recommendations contained

in the Final EPDP Policy Recommendation(s) Report, by the required thresholds;

- f. EPDP Recommendations and Final EPDP Recommendation(s) Report forwarded to the Board through a Recommendations Report approved by the Council; and
- g. Board approval of EPDP Recommendation(s).

## Section 2. Expedited Policy Development Process Manual

The GNSO shall include a specific section(s) on the EPDP process as part of its maintenance of the GNSO Policy Development Process Manual (PDP Manual), described in Annex 5 of the GNSO Operating Procedures. The EPDP Manual shall contain specific additional guidance on completion of all elements of an EPDP, including those elements that are not otherwise defined in these Bylaws. The EPDP Manual and any amendments thereto are subject to a twenty-one (21) day public comment period at minimum, as well as Board oversight and review, as specified at Article X, Section 3.4.

## Section 3. Initiation of the EPDP

The Council may initiate an EPDP as follows:

The Council may only initiate the EPDP by a vote of the Council. Initiation of an EPDP requires an affirmative Supermajority vote of the Council (as defined in these Bylaws) in favor of initiating the EPDP.

The request to initiate an EPDP must be accompanied by an EPDP scoping document, which is expected to include at a minimum the following information:

1. Name of Council Member / SG / C;
2. Origin of issue (e.g. previously completed PDP);
3. Scope of the effort (detailed description of the issue or question that the EPDP is expected to address);
4. Description of how this issue meets the criteria for an EPDP, i.e. how the EPDP will address either: (1) a narrowly defined policy issue that was identified and scoped after either the adoption of a GNSO policy recommendation by the ICANN Board or the implementation of such an adopted recommendation, or (2) new or additional policy recommendations on a specific GNSO policy issue that had been scoped previously as part of a PDP that was not completed or other

similar effort, including relevant supporting information in either case;

5. If not provided as part of item 4, the opinion of the ICANN General Counsel as to whether the issue proposed for consideration is properly within the scope of the ICANN's mission, policy process and more specifically the role of the GNSO;
6. Proposed EPDP mechanism (e.g. WG, DT, individual volunteers);
7. Method of operation, if different from GNSO Working Group Guidelines;
8. Decision-making methodology for EPDP mechanism, if different from GNSO Working Group Guidelines;
9. Target completion date.

#### Section 4. **Council Deliberation**

Upon receipt of an EPDP Final Recommendation(s) Report, whether as the result of an EPDP Team or otherwise, the Council chair will (i) distribute the Final EPDP Recommendation(s) Report to all Council members; and (ii) call for Council deliberation on the matter in accordance with the PDP Manual.

Approval of EPDP Recommendation(s) requires an affirmative vote of the Council meeting the thresholds set forth in in Article X, Section 3, paragraphs 9 n-o, as supplemented by the PDP Manual.

#### Section 5. **Preparation of the Board Report**

If the EPDP Recommendation(s) contained in the Final EPDP Recommendation(s) Report are approved by the GNSO Council, a Recommendation(s) Report shall be approved by the GNSO Council for delivery to the ICANN Board.

#### Section 6. **Board Approval Processes**

The Board will meet to discuss the EPDP recommendation(s) as soon as feasible, but preferably not later than the second meeting after receipt of the Recommendations Report from the Staff Manager. Board deliberation on the EPDP Recommendations contained within the Recommendations Report shall proceed as follows:

- a. Any EPDP Recommendations approved by a GNSO Supermajority Vote shall be adopted by the Board unless, by a vote of more than two-thirds (2/3) of the Board, the Board determines that such policy is not in the best interests of the ICANN community or ICANN. If the

GNSO Council recommendation was approved by less than a GNSO Supermajority Vote, a majority vote of the Board will be sufficient to determine that such policy is not in the best interests of the ICANN community or ICANN.

- b. In the event that the Board determines, in accordance with paragraph a above, that the proposed EPDP Recommendations are not in the best interests of the ICANN community or ICANN (the Corporation), the Board shall (i) articulate the reasons for its determination in a report to the Council (the "Board Statement"); and (ii) submit the Board Statement to the Council.
- c. The Council shall review the Board Statement for discussion with the Board as soon as feasible after the Council's receipt of the Board Statement. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board will discuss the Board Statement.
- d. At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its recommendation, and communicate that conclusion (the "Supplemental Recommendation") to the Board, including an explanation for the then-current recommendation. In the event that the Council is able to reach a GNSO Supermajority Vote on the Supplemental Recommendation, the Board shall adopt the recommendation unless more than two-thirds (2/3) of the Board determines that such guidance is not in the interests of the ICANN community or ICANN. For any Supplemental Recommendation approved by less than a GNSO Supermajority Vote, a majority vote of the Board shall be sufficient to determine that the guidance in the Supplemental Recommendation is not in the best interest of the ICANN community or ICANN.

#### **Section 7. Implementation of Approved Policies**

Upon a final decision of the Board adopting the EPDP recommendations, the Board shall, as appropriate, give authorization or direction to ICANN staff to implement the EPDP Recommendations. If deemed necessary, the Board shall direct ICANN staff to work with the GNSO Council to create a guidance implementation plan, based upon the guidance recommendations identified in the Final EPDP Recommendation(s) Report.

#### **Section 8. Maintenance of Records**

Throughout the EPDP, from initiation to a final decision by the Board, ICANN will maintain on the Website, a status web page detailing the progress of each

EPDP issue. Such status page will outline the completed and upcoming steps in the EPDP process, and contain links to key resources (e.g. Reports, Comments Fora, EPDP Discussions, etc.).

#### Section 9. **Applicability**

The procedures of this Annex A-1 shall be applicable from 28 September 2015 onwards.

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### **Annex A-2: GNSO Guidance Process**

The following process shall govern the GNSO guidance process ("GGP") until such time as modifications are recommended to and approved by the ICANN Board of Directors ("Board"). The role of the GNSO is outlined in Article X of these Bylaws. If the GNSO is conducting activities that are intended to result in a Consensus Policy, the Council should act through a Policy Development Process (see Annex A).

#### Section 1. **Required Elements of a GNSO Guidance Process**

The following elements are required at a minimum to develop GNSO guidance:

1. Formal initiation of the GNSO Guidance Process by the Council, including a GGP scoping document;
2. Identification of the types of expertise needed on the GGP Team;
3. Recruiting and formation of a GGP Team or other designated work method;
4. Proposed GNSO Guidance Recommendation(s) Report produced by a GGP Team or other designated work method;
5. Final GNSO Guidance Recommendation(s) Report produced by a GGP Team, or other designated work method, and forwarded to the Council for deliberation;
6. Council approval of GGP Recommendations contained in the Final Recommendation(s) Report, by the required thresholds;
7. GGP Recommendations and Final Recommendation(s) Report shall be forwarded to the Board through a Recommendations Report approved by the Council; and
8. Board approval of GGP Recommendation(s).

## Section 2. GNSO Guidance Process Manual

The GNSO shall maintain a GNSO Guidance Process (GGP Manual) within the operating procedures of the GNSO maintained by the GNSO Council. The GGP Manual shall contain specific additional guidance on completion of all elements of a GGP, including those elements that are not otherwise defined in these Bylaws. The GGP Manual and any amendments thereto are subject to a twenty-one (21) day public comment period at minimum, as well as Board oversight and review, as specified at Article X, Section 3.4.

## Section 3. Initiation of the GGP

The Council may initiate a GGP as follows:

The Council may only initiate the GGP by a vote of the Council or at the formal request of the ICANN Board. Initiation of a GGP requires a vote as set forth in Article X, Section 3, paragraph 9.p in favor of initiating the GGP. In the case of a GGP requested by the ICANN Board, a GGP will automatically be initiated unless the GNSO Council votes against the initiation of a GGP as set forth in Article X, Section 3, paragraph 9 q<sup>1</sup>.

The request to initiate a GGP must be accompanied by a GGP scoping document, which is expected to include at a minimum the following information:

1. Name of Council Member / SG / C
2. Origin of issue (e.g., board request)
3. Scope of the effort (detailed description of the issue or question that the GGP is expected to address)
4. Proposed GGP mechanism (e.g. WG, DT, individual volunteers)
5. Method of operation, if different from GNSO Working Group Guidelines
6. Decision-making methodology for GGP mechanism, if different from GNSO Working Group Guidelines
7. Desired completion date and rationale

In the event the Board makes a request for a GGP, the Board should provide a mechanism by which the GNSO Council can consult with the Board to provide information on the scope, timing, and priority of the request for a GGP.

## Section 4. Council Deliberation

Upon receipt of a Final Recommendation(s) Report, whether as the result of a GGP Team or otherwise, the Council chair will (i) distribute the Final Recommendation(s) Report to all Council members; and (ii) call for Council deliberation on the matter in accordance with the GGP Manual.

The Council approval process is set forth in Article X, Section 3, paragraph 9. r<sup>2</sup> as supplemented by the GGP Manual.

#### Section 5. Preparation of the Board Report

If the GGP recommendations contained in the Final Recommendation(s) Report are approved by the GNSO Council, a Recommendations Report shall be approved by the GNSO Council for delivery to the ICANN Board.

#### Section 6. Board Approval Processes

The Board will meet to discuss the GNSO Guidance recommendation(s) as soon as feasible, but preferably not later than the second meeting after receipt of the Board Report from the Staff Manager. Board deliberation on the GGP Recommendations contained within the Recommendations Report shall proceed as follows:

- a. Any GGP Recommendations approved by a GNSO Supermajority Vote shall be adopted by the Board unless, by a vote of more than two-thirds (2/3) of the Board, the Board determines that such guidance is not in the best interests of the ICANN community or ICANN.
- b. In the event that the Board determines, in accordance with paragraph a above, that the proposed GNSO Guidance recommendation(s) adopted by a GNSO Supermajority Vote is not in the best interests of the ICANN community or ICANN (the Corporation), the Board shall (i) articulate the reasons for its determination in a report to the Council (the "Board Statement"); and (ii) submit the Board Statement to the Council.
- c. The Council shall review the Board Statement for discussion with the Board as soon as feasible after the Council's receipt of the Board Statement. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board will discuss the Board Statement.
- d. At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its recommendation, and communicate that conclusion (the "Supplemental Recommendation") to the Board, including an explanation for the then-current recommendation. In the

event that the Council is able to reach a GNSO Supermajority Vote on the Supplemental Recommendation, the Board shall adopt the recommendation unless more than two-thirds (2/3) of the Board determines that such guidance is not in the interests of the ICANN community or ICANN.

#### Section 7. **Implementation of Approved GNSO Guidance**

Upon a final decision of the Board adopting the guidance, the Board shall, as appropriate, give authorization or direction to ICANN staff to implement the GNSO Guidance. If deemed necessary, the Board may direct ICANN Staff to work with the GNSO Council to create a guidance implementation plan, if deemed necessary, based upon the guidance recommendations identified in the Final Recommendation(s) Report.

#### Section 8. **Maintenance of Records**

Throughout the GGP, from initiation to a final decision by the Board, ICANN will maintain on the Website, a status web page detailing the progress of each GGP issue. Such status page will outline the completed and upcoming steps in the GGP process, and contain links to key resources (e.g. Reports, Comments Fora, GGP Discussions, etc.).

#### Section 9. **Additional Definitions**

"Comment Site", "Comment Forum", "Comments Fora" and "Website" refer to one or more websites designated by ICANN on which notifications and comments regarding the GGP will be posted.

"GGP Staff Manager" means an ICANN staff person(s) who manages the GGP.

### Annex B: ccNSO Policy-Development Process (ccPDP)

The following process shall govern the ccNSO policy-development process ("PDP").

#### 1. **Request for an Issue Report**

An Issue Report may be requested by any of the following:

- a. *Council*. The ccNSO Council (in this Annex B, the "Council") may call for the creation of an Issue Report by an affirmative vote of at least seven of the members of the Council present at any meeting or voting

by e-mail.

- b. *Board*. The ICANN Board may call for the creation of an Issue Report by requesting the Council to begin the policy-development process.
- c. *Regional Organization*. One or more of the Regional Organizations representing ccTLDs in the ICANN recognized Regions may call for creation of an Issue Report by requesting the Council to begin the policy-development process.
- d. *ICANN Supporting Organization or Advisory Committee*. An ICANN Supporting Organization or an ICANN Advisory Committee may call for creation of an Issue Report by requesting the Council to begin the policy-development process.
- e. *Members of the ccNSO*. The members of the ccNSO may call for the creation of an Issue Report by an affirmative vote of at least ten members of the ccNSO present at any meeting or voting by e-mail.

Any request for an Issue Report must be in writing and must set out the issue upon which an Issue Report is requested in sufficient detail to enable the Issue Report to be prepared. It shall be open to the Council to request further information or undertake further research or investigation for the purpose of determining whether or not the requested Issue Report should be created.

## **2. Creation of the Issue Report and Initiation Threshold**

Within seven days after an affirmative vote as outlined in Item 1(a) above or the receipt of a request as outlined in Items 1 (b), (c), or (d) above the Council shall appoint an Issue Manager. The Issue Manager may be a staff member of ICANN (in which case the costs of the Issue Manager shall be borne by ICANN) or such other person or persons selected by the Council (in which case the ccNSO shall be responsible for the costs of the Issue Manager).

Within fifteen (15) calendar days after appointment (or such other time as the Council shall, in consultation with the Issue Manager, deem to be appropriate), the Issue Manager shall create an Issue Report. Each Issue Report shall contain at least the following:

- a. The proposed issue raised for consideration;
- b. The identity of the party submitting the issue;
- c. How that party is affected by the issue;
- d. Support for the issue to initiate the PDP;

- e. A recommendation from the Issue Manager as to whether the Council should move to initiate the PDP for this issue (the "Manager Recommendation"). Each Manager Recommendation shall include, and be supported by, an opinion of the ICANN General Counsel regarding whether the issue is properly within the scope of the ICANN policy process and within the scope of the ccNSO. In coming to his or her opinion, the General Counsel shall examine whether:
1. The issue is within the scope of ICANN's mission statement;
  2. Analysis of the relevant factors according to Article IX, Section 6(2) and Annex C affirmatively demonstrates that the issue is within the scope of the ccNSO;

In the event that the General Counsel reaches an opinion in the affirmative with respect to points 1 and 2 above then the General Counsel shall also consider whether the issue:

3. Implicates or affects an existing ICANN policy;
4. Is likely to have lasting value or applicability, albeit with the need for occasional updates, and to establish a guide or framework for future decision-making.

In all events, consideration of revisions to the ccPDP (this Annex B) or to the scope of the ccNSO (Annex C) shall be within the scope of ICANN and the ccNSO.

In the event that General Counsel is of the opinion the issue is not properly within the scope of the ccNSO Scope, the Issue Manager shall inform the Council of this opinion. If after an analysis of the relevant factors according to Article IX, Section 6 and Annex C a majority of 10 or more Council members is of the opinion the issue is within scope the Chair of the ccNSO shall inform the Issue Manager accordingly. General Counsel and the ccNSO Council shall engage in a dialogue according to agreed rules and procedures to resolve the matter. In the event no agreement is reached between General Counsel and the Council as to whether the issue is within or outside Scope of the ccNSO then by a vote of 15 or more members the Council may decide the issue is within scope. The Chair of the ccNSO shall inform General Counsel and the Issue Manager accordingly. The Issue Manager shall then proceed with a recommendation whether or not the Council should move to initiate the PDP including both the opinion and analysis of General Counsel and Council in the Issues Report.

- f. In the event that the Manager Recommendation is in favor of initiating

the PDP, a proposed time line for conducting each of the stages of PDP outlined herein (PDP Time Line).

- g. If possible, the issue report shall indicate whether the resulting output is likely to result in a policy to be approved by the ICANN Board. In some circumstances, it will not be possible to do this until substantive discussions on the issue have taken place. In these cases, the issue report should indicate this uncertainty. Upon completion of the Issue Report, the Issue Manager shall distribute it to the full Council for a vote on whether to initiate the PDP.

### **3. Initiation of PDP**

The Council shall decide whether to initiate the PDP as follows:

- a. Within 21 days after receipt of an Issue Report from the Issue Manager, the Council shall vote on whether to initiate the PDP. Such vote should be taken at a meeting held in any manner deemed appropriate by the Council, including in person or by conference call, but if a meeting is not feasible the vote may occur by e-mail.
- b. A vote of ten or more Council members in favor of initiating the PDP shall be required to initiate the PDP provided that the Issue Report states that the issue is properly within the scope of the ICANN mission statement and the ccNSO Scope.

### **4. Decision Whether to Appoint Task Force; Establishment of Time Line**

At the meeting of the Council where the PDP has been initiated (or, where the Council employs a vote by e-mail, in that vote) pursuant to Item 3 above, the Council shall decide, by a majority vote of members present at the meeting (or voting by e-mail), whether or not to appoint a task force to address the issue. If the Council votes:

- a. In favor of convening a task force, it shall do so in accordance with Item 7 below.
- b. Against convening a task force, then it shall collect information on the policy issue in accordance with Item 8 below.

The Council shall also, by a majority vote of members present at the meeting or voting by e-mail, approve or amend and approve the PDP Time Lineset out in the Issue Report.

### **5. Composition and Selection of Task Forces**

- a. Upon voting to appoint a task force, the Council shall invite each of the Regional Organizations (see [Article IX, Section 6](#)) to appoint two individuals to participate in the task force (the "Representatives"). Additionally, the Council may appoint up to three advisors (the "Advisors") from outside the [ccNSO](#) and, following formal request for [GAC](#) participation in the Task Force, accept up to two Representatives from the [Governmental Advisory Committee](#) to sit on the task force. The Council may increase the number of Representatives that may sit on a task force in its discretion in circumstances that it deems necessary or appropriate.
- b. Any Regional Organization wishing to appoint Representatives to the task force must provide the names of the Representatives to the Issue Manager within ten (10) calendar days after such request so that they are included on the task force. Such Representatives need not be members of the Council, but each must be an individual who has an interest, and ideally knowledge and expertise, in the subject matter, coupled with the ability to devote a substantial amount of time to the task force's activities.
- c. The Council may also pursue other actions that it deems appropriate to assist in the [PDP](#), including appointing a particular individual or organization to gather information on the issue or scheduling meetings for deliberation or briefing. All such information shall be submitted to the Issue Manager in accordance with the [PDP Time Line](#).

## **6. Public Notification of Initiation of the [PDP](#) and Comment Period**

After initiation of the [PDP](#), [ICANN](#) shall post a notification of such action to the Website and to the other [ICANN Supporting Organizations](#) and [Advisory Committees](#). A comment period (in accordance with the [PDP Time Line](#), and ordinarily at least 21 days long) shall be commenced for the issue. Comments shall be accepted from [ccTLD](#) managers, other [Supporting Organizations](#), [Advisory Committees](#), and from the public. The Issue Manager, or some other designated Council representative shall review the comments and incorporate them into a report (the "Comment Report") to be included in either the Preliminary Task Force Report or the Initial Report, as applicable.

## **7. Task Forces**

- a. *Role of Task Force.* If a task force is created, its role shall be responsible for (i) gathering information documenting the positions of the [ccNSO](#) members within the Geographic Regions and other parties and groups; and (ii) otherwise obtaining relevant information that shall enable the Task Force Report to be as complete and informative as

possible to facilitate the Council's meaningful and informed deliberation.

The task force shall not have any formal decision-making authority. Rather, the role of the task force shall be to gather information that shall document the positions of various parties or groups as specifically and comprehensively as possible, thereby enabling the Council to have a meaningful and informed deliberation on the issue.

- b. *Task Force Charter or Terms of Reference.* The Council, with the assistance of the Issue Manager, shall develop a charter or terms of reference for the task force (the "Charter") within the time designated in the PDP Time Line. Such Charter shall include:
1. The issue to be addressed by the task force, as such issue was articulated for the vote before the Council that initiated the PDP;
  2. The specific time line that the task force must adhere to, as set forth below, unless the Council determines that there is a compelling reason to extend the timeline; and
  3. Any specific instructions from the Council for the task force, including whether or not the task force should solicit the advice of outside advisors on the issue.

The task force shall prepare its report and otherwise conduct its activities in accordance with the Charter. Any request to deviate from the Charter must be formally presented to the Council and may only be undertaken by the task force upon a vote of a majority of the Council members present at a meeting or voting by e-mail. The quorum requirements of [Article IX, Section 3\(14\)](#) shall apply to Council actions under this Item 7(b).

- c. *Appointment of Task Force Chair.* The Issue Manager shall convene the first meeting of the task force within the time designated in the PDP Time Line. At the initial meeting, the task force members shall, among other things, vote to appoint a task force chair. The chair shall be responsible for organizing the activities of the task force, including compiling the Task Force Report. The chair of a task force need not be a member of the Council.
- d. *Collection of Information.*
1. *Regional Organization Statements.* The Representatives shall each be responsible for soliciting the position of the Regional Organization for their Geographic Region, at a minimum, and may solicit other comments, as each Representative deems

appropriate, including the comments of the ccNSO members in that region that are not members of the Regional Organization, regarding the issue under consideration. The position of the Regional Organization and any other comments gathered by the Representatives should be submitted in a formal statement to the task force chair (each, a "Regional Statement") within the time designated in the PDP Time Line. Every Regional Statement shall include at least the following:

- i. If a Supermajority Vote (as defined by the Regional Organization) was reached, a clear statement of the Regional Organization's position on the issue;
- ii. If a Supermajority Vote was not reached, a clear statement of all positions espoused by the members of the Regional Organization;
- iii. A clear statement of how the Regional Organization arrived at its position(s). Specifically, the statement should detail specific meetings, teleconferences, or other means of deliberating an issue, and a list of all members who participated or otherwise submitted their views;
- iv. A statement of the position on the issue of any ccNSO members that are not members of the Regional Organization;
- v. An analysis of how the issue would affect the Region, including any financial impact on the Region; and
- vi. An analysis of the period of time that would likely be necessary to implement the policy.

2. *Outside Advisors.* The task force may, in its discretion, solicit the opinions of outside advisors, experts, or other members of the public. Such opinions should be set forth in a report prepared by such outside advisors, and (i) clearly labeled as coming from outside advisors; (ii) accompanied by a detailed statement of the advisors' (a) qualifications and relevant experience and (b) potential conflicts of interest. These reports should be submitted in a formal statement to the task force chair within the time designated in the PDP Time Line.

e. *Task Force Report.* The chair of the task force, working with the Issue Manager, shall compile the Regional Statements, the Comment Report, and other information or reports, as applicable, into a single

document ("Preliminary Task Force Report") and distribute the Preliminary Task Force Report to the full task force within the time designated in the PDP Time Line. The task force shall have a final task force meeting to consider the issues and try and reach a Supermajority Vote. After the final task force meeting, the chair of the task force and the Issue Manager shall create the final task force report (the "Task Force Report") and post it on the Website and to the other ICANN Supporting Organizations and Advisory Committees. Each Task Force Report must include:

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

**8. Procedure if No Task Force is Formed**

- a. If the Council decides not to convene a task force, each Regional Organization shall, within the time designated in the PDP Time Line, appoint a representative to solicit the Region's views on the issue. Each such representative shall be asked to submit a Regional Statement to the Issue Manager within the time designated in the PDP Time Line.
- b. The Council may, in its discretion, take other steps to assist in the PDP, including, for example, appointing a particular individual or organization, to gather information on the issue or scheduling meetings for deliberation or briefing. All such information shall be submitted to the Issue Manager within the time designated in the PDP Time Line.
- c. The Council shall formally request the Chair of the GAC to offer opinion or advice.

- d. The Issue Manager shall take all Regional Statements, the Comment Report, and other information and compile (and post on the Website) an Initial Report within the time designated in the PDP Time Line. Thereafter, the Issue Manager shall, in accordance with Item 9 below, create a Final Report.

#### **9. Comments to the Task Force Report or Initial Report**

- a. A comment period (in accordance with the PDP Time Line, and ordinarily at least 21 days long) shall be opened for comments on the Task Force Report or Initial Report. Comments shall be accepted from ccTLD managers, other Supporting Organizations, Advisory Committees, and from the public. All comments shall include the author's name, relevant experience, and interest in the issue.
- b. At the end of the comment period, the Issue Manager shall review the comments received and may, in the Issue Manager's reasonable discretion, add appropriate comments to the Task Force Report or Initial Report, to prepare the "Final Report". The Issue Manager shall not be obligated to include all comments made during the comment period, nor shall the Issue Manager be obligated to include all comments submitted by any one individual or organization.
- c. The Issue Manager shall prepare the Final Report and submit it to the Council chair within the time designated in the PDP Time Line.

#### **10. Council Deliberation**

- a. Upon receipt of a Final Report, whether as the result of a task force or otherwise, the Council chair shall (i) distribute the Final Report to all Council members; (ii) call for a Council meeting within the time designated in the PDP Time Line wherein the Council shall work towards achieving a recommendation to present to the Board; and (iii) formally send to the GAC Chair an invitation to the GAC to offer opinion or advice. Such meeting may be held in any manner deemed appropriate by the Council, including in person or by conference call. The Issue Manager shall be present at the meeting.
- b. The Council may commence its deliberation on the issue prior to the formal meeting, including via in-person meetings, conference calls, e-mail discussions, or any other means the Council may choose.
- c. The Council may, if it so chooses, solicit the opinions of outside advisors at its final meeting. The opinions of these advisors, if relied upon by the Council, shall be (i) embodied in the Council's report to the Board, (ii) specifically identified as coming from an outside advisor; and (iii) accompanied by a detailed statement of the advisor's (a)

qualifications and relevant experience and (b) potential conflicts of interest.

### **11. Recommendation of the Council**

In considering whether to make a recommendation on the issue (a "Council Recommendation"), the Council shall seek to act by consensus. If a minority opposes a consensus position, that minority shall prepare and circulate to the Council a statement explaining its reasons for opposition. If the Council's discussion of the statement does not result in consensus, then a recommendation supported by 14 or more of the Council members shall be deemed to reflect the view of the Council, and shall be conveyed to the Members as the Council's Recommendation. Notwithstanding the foregoing, as outlined below, all viewpoints expressed by Council members during the PDP must be included in the Members Report.

### **12. Council Report to the Members**

In the event that a Council Recommendation is adopted pursuant to Item 11 then the Issue Manager shall, within seven days after the Council meeting, incorporate the Council's Recommendation together with any other viewpoints of the Council members into a Members Report to be approved by the Council and then to be submitted to the Members (the "Members Report"). The Members Report must contain at least the following:

- a. A clear statement of the Council's recommendation;
- b. The Final Report submitted to the Council; and
- c. A copy of the minutes of the Council's deliberation on the policy issue (see Item 10), including all the opinions expressed during such deliberation, accompanied by a description of who expressed such opinions.

### **13. Members Vote**

Following the submission of the Members Report and within the time designated by the PDP Time Line, the ccNSO members shall be given an opportunity to vote on the Council Recommendation. The vote of members shall be electronic and members' votes shall be lodged over such a period of time as designated in the PDP Time Line (at least 21 days long).

In the event that at least 50% of the ccNSO members lodge votes within the voting period, the resulting vote will be employed without further process. In the event that fewer than 50% of the ccNSO members lodge votes in the

first round of voting, the first round will not be employed and the results of a final, second round of voting, conducted after at least thirty days notice to the ccNSO members, will be employed if at least 50% of the ccNSO members lodge votes. In the event that more than 66% of the votes received at the end of the voting period shall be in favor of the Council Recommendation, then the recommendation shall be conveyed to the Board in accordance with Item 14 below as the ccNSO Recommendation.

#### **14. Board Report**

The Issue Manager shall within seven days after a ccNSO Recommendation being made in accordance with Item 13 incorporate the ccNSO Recommendation into a report to be approved by the Council and then to be submitted to the Board (the "Board Report"). The Board Report must contain at least the following:

- a. A clear statement of the ccNSO recommendation;
- b. The Final Report submitted to the Council; and
- c. the Members' Report.

#### **15. Board Vote**

- a. The Board shall meet to discuss the ccNSO Recommendation as soon as feasible after receipt of the Board Report from the Issue Manager, taking into account procedures for Board consideration.
- b. The Board shall adopt the ccNSO Recommendation unless by a vote of more than 66% the Board determines that such policy is not in the best interest of the ICANN community or of ICANN.
  1. In the event that the Board determines not to act in accordance with the ccNSO Recommendation, the Board shall (i) state its reasons for its determination not to act in accordance with the ccNSO Recommendation in a report to the Council (the "Board Statement"); and (ii) submit the Board Statement to the Council.
  2. The Council shall discuss the Board Statement with the Board within thirty days after the Board Statement is submitted to the Council. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board shall discuss the Board Statement. The discussions shall be held in good faith and in a timely and efficient manner, to find a mutually acceptable solution.
  3. At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its Council

Recommendation. A recommendation supported by 14 or more of the Council members shall be deemed to reflect the view of the Council (the Council's "Supplemental Recommendation"). That Supplemental Recommendation shall be conveyed to the Members in a Supplemental Members Report, including an explanation for the Supplemental Recommendation. Members shall be given an opportunity to vote on the Supplemental Recommendation under the same conditions outlined in Item 13. In the event that more than 66% of the votes cast by ccNSO Members during the voting period are in favor of the Supplemental Recommendation then that recommendation shall be conveyed to Board as the ccNSO Supplemental Recommendation and the Board shall adopt the recommendation unless by a vote of more than 66% of the Board determines that acceptance of such policy would constitute a breach of the fiduciary duties of the Board to the Company.

4. In the event that the Board does not accept the ccNSO Supplemental Recommendation, it shall state its reasons for doing so in its final decision ("Supplemental Board Statement").
5. In the event the Board determines not to accept a ccNSO Supplemental Recommendation, then the Board shall not be entitled to set policy on the issue addressed by the recommendation and the status quo shall be preserved until such time as the ccNSO shall, under the ccPDP, make a recommendation on the issue that is deemed acceptable by the Board.

## **16. Implementation of the Policy**

Upon adoption by the Board of a ccNSO Recommendation or ccNSO Supplemental Recommendation, the Board shall, as appropriate, direct or authorize ICANN staff to implement the policy.

## **17. Maintenance of Records**

With respect to each ccPDP for which an Issue Report is requested (see Item 1), ICANN shall maintain on the Website a status web page detailing the progress of each ccPDP, which shall provide a list of relevant dates for the ccPDP and shall also link to the following documents, to the extent they have been prepared pursuant to the ccPDP:

- a. Issue Report;

- b. PDP Time Line;
- c. Comment Report;
- d. Regional Statement(s);
- e. Preliminary Task Force Report;
- f. Task Force Report;
- g. Initial Report;
- h. Final Report;
- i. Members' Report;
- j. Board Report;
- k. Board Statement;
- l. Supplemental Members' Report; and
- m. Supplemental Board Statement.

In addition, ICANN shall post on the Website comments received in electronic written form specifically suggesting that a ccPDP be initiated.

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## Annex C: The Scope of the ccNSO

This annex describes the scope and the principles and method of analysis to be used in any further development of the scope of the ccNSO's policy-development role. As provided in [Article IX, Section 6\(2\)](#) of the Bylaws, that scope shall be defined according to the procedures of the ccPDP.

The scope of the ccNSO's authority and responsibilities must recognize the complex relation between ICANN and ccTLD managers/registries with regard to policy issues. This annex shall assist the ccNSO, the ccNSO Council, and the ICANN Board and staff in delineating relevant global policy issues.

### *Policy areas*

The ccNSO's policy role should be based on an analysis of the following functional model of the DNS:

1. Data is registered/maintained to generate a zone file,
2. A zone file is in turn used in TLD name servers.

Within a TLD two functions have to be performed (these are addressed in greater detail below):

1. Entering data into a database (Data Entry Function) and
2. Maintaining and ensuring upkeep of name-servers for the TLD (Name Server Function).

These two core functions must be performed at the ccTLD registry level as well as at a higher level (IANA function and root servers) and at lower levels of the DNS hierarchy. This mechanism, as RFC 1591 points out, is recursive:

There are no requirements on sub domains of top-level domains beyond the requirements on higher-level domains themselves. That is, the requirements in this memo are applied recursively. In particular, all sub domains shall be allowed to operate their own domain name servers, providing in them whatever information the sub domain manager sees fit (as long as it is true and correct).

#### *The Core Functions*

##### 1. Data Entry Function (DEF):

Looking at a more detailed level, the first function (entering and maintaining data in a database) should be fully defined by a naming policy. This naming policy must specify the rules and conditions:

- a. under which data will be collected and entered into a database or data changed (at the TLD level among others, data to reflect a transfer from registrant to registrant or changing registrar) in the database.
- b. for making certain data generally and publicly available (be it, for example, through Whois or nameservers).

##### 2. The Name-Server Function (NSF)

The name-server function involves essential interoperability and stability issues at the heart of the domain name system. The importance of this function extends to nameservers at the ccTLD level, but also to the root servers (and root-server system) and nameservers at lower levels.

On its own merit and because of interoperability and stability considerations, properly functioning nameservers are of utmost importance to the individual, as well as to the local and the global Internet communities.

With regard to the nameserver function, therefore, policies need to be defined

and established. Most parties involved, including the majority of ccTLD registries, have accepted the need for common policies in this area by adhering to the relevant RFCs, among others RFC 1591.

*Respective Roles with Regard to Policy, Responsibilities, and Accountabilities*

It is in the interest of ICANN and ccTLD managers to ensure the stable and proper functioning of the domain name system. ICANN and the ccTLD registries each have a distinctive role to play in this regard that can be defined by the relevant policies. The scope of the ccNSO cannot be established without reaching a common understanding of the allocation of authority between ICANN and ccTLD registries.

Three roles can be distinguished as to which responsibility must be assigned on any given issue:

- Policy role: i.e. the ability and power to define a policy;
- Executive role: i.e. the ability and power to act upon and implement the policy; and
- Accountability role: i.e. the ability and power to hold the responsible entity accountable for exercising its power.

Firstly, responsibility presupposes a policy and this delineates the policy role. Depending on the issue that needs to be addressed those who are involved in defining and setting the policy need to be determined and defined. Secondly, this presupposes an executive role defining the power to implement and act within the boundaries of a policy. Finally, as a counter-balance to the executive role, the accountability role needs to be defined and determined.

The information below offers an aid to:

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

This annex defines the scope of the ccNSO with regard to developing policies. The scope is limited to the policy role of the ccNSO policy-development process for functions and levels explicitly stated below. It is anticipated that the accuracy of the assignments of policy, executive, and accountability roles shown below will be considered during a scope-definition ccPDP process.

*Name Server Function (as to ccTLDs)*

Level 1: Root Name Servers

Policy role: IETF, RSSAC (ICANN)  
Executive role: Root Server System Operators  
Accountability role: RSSAC (ICANN), (US DoC-ICANN MoU)

Level 2: ccTLD Registry Name Servers in respect to interoperability  
Policy role: ccNSO Policy Development Process (ICANN), for best practices a ccNSO process can be organized  
Executive role: ccTLD Manager  
Accountability role: part ICANN (IANA), part Local Internet Community, including local government

Level 3: User's Name Servers  
Policy role: ccTLD Manager, IETF (RFC)  
Executive role: Registrant  
Accountability role: ccTLD Manager

*Data Entry Function (as to ccTLDs)*

Level 1: Root Level Registry  
Policy role: ccNSO Policy Development Process (ICANN)  
Executive role: ICANN (IANA)  
Accountability role: ICANN community, ccTLD Managers, US DoC, (national authorities in some cases)

Level 2: ccTLD Registry  
Policy role: Local Internet Community, including local government, and/or ccTLD Manager according to local structure  
Executive role: ccTLD Manager  
Accountability role: Local Internet Community, including national authorities in some cases

Level 3: Second and Lower Levels  
Policy role: Registrant  
Executive role: Registrant  
Accountability role: Registrant, users of lower-level domain names

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<sup>1</sup>A GNSO Supermajority Vote will be required to not initiate a GGP following a formal request from the ICANN Board.

<sup>2</sup>Approval of GGP recommendations requires a GNSO Supermajority Vote.



<p><b>Who We Are</b></p> <ul style="list-style-type: none"> <li>Get Started</li> <li>Learning</li> <li>Participate</li> <li>Groups</li> <li>Board</li> <li>President's Corner</li> <li>Staff</li> <li>Careers</li> <li>Newsletter</li> <li>Development and Public Responsibility</li> </ul>	<p><b>Contact Us</b></p> <ul style="list-style-type: none"> <li>Offices</li> <li>Global Support</li> <li>Security Team</li> <li>PGP Keys</li> <li>Certificate Authority</li> <li>Registry Liaison</li> <li>AOC Review</li> <li>Organizational Reviews</li> <li>Request a Speaker</li> <li>For Journalists</li> </ul>	<p><b>Accountability &amp; Transparency</b></p> <ul style="list-style-type: none"> <li>Accountability Mechanisms</li> <li>Independent Review Process</li> <li>Request for Reconsideration</li> <li>Ombudsman</li> </ul>	<p><b>Governance</b></p> <ul style="list-style-type: none"> <li>Documents</li> <li>Agreements</li> <li>AOC Review</li> <li>Annual Report</li> <li>Financials</li> <li>Document Disclosure</li> <li>Planning</li> <li>Dashboard Beta</li> <li>RFPs</li> <li>Litigation</li> <li>Correspondence</li> </ul>	<p><b>Help</b></p> <ul style="list-style-type: none"> <li>Dispute Resolution</li> <li>Domain Name Dispute Resolution</li> <li>Name Collision</li> <li>Registrar Problems</li> <li>WHOIS</li> </ul>
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R-2

RESPONDENT'S EXHIBIT

*Dedicated to preserving the central co-ordinating functions of the global Internet for the public good.*

**INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS (ICANN)**

**GOVERNMENTAL ADVISORY COMMITTEE (GAC) - OPERATING PRINCIPLES**

*As amended, GAC Dakar meeting in October, 2011*

Whereas:

1. The functions and responsibilities of the Internet Assigned Numbers Authority (IANA) are being transferred to a new private not for profit corporation, the Internet Corporation for Assigned Names and Numbers (ICANN).
2. ICANN's functions and responsibilities will affect the functioning of the global Internet.
3. ICANN's Articles of Incorporation establish that the corporation shall operate for the benefit of the Internet community as a whole and shall pursue the charitable and public purposes of lessening the burdens of government and promoting the global public interest in the operational stability of the Internet by performing and co-ordinating functions associated with the technical management of Internet names and addresses.
4. a) The Articles of Incorporation and Bylaws establish that ICANN shall carry out its activities in conformity with relevant principles of international law and applicable international conventions and local law. b) ICANN is committed to carrying out its activities based on the principles of stability, competition, private bottom-up coordination, and representation.
5. ICANN's Bylaws, Article XI Advisory Committees, Section 2.1 provide for a Governmental Advisory Committee The Governmental Advisory Committee should consider and provide advice on the activities of ICANN as they relate to concerns of governments and where they may affect public policy issues. The Advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account by ICANN, both in the formulation and adoption of policies.
6. The GAC commits itself to implement efficient procedures in support of ICANN and to provide thorough and timely advice and analysis on relevant matters of concern with regard to government and public interests

Considering that:

1. The Internet naming and addressing system is a public resource that must be managed in the interests of the global Internet community;
2. The management of Internet names and addresses must be facilitated by organisations that are global in character.
3. ICANN's decision making should take into account public policy objectives including, among other things:
  - secure, reliable and affordable functioning of the Internet, including uninterrupted service and universal connectivity;
  - the robust development of the Internet, in the interest of the public good, for government, private, educational, and commercial purposes, world wide;
  - transparency and non-discriminatory practices in ICANN's role in the allocation of Internet names and address;
  - effective competition at all appropriate levels of activity and conditions for fair competition, which will bring benefits to all categories of users including, greater choice, lower prices, and better services;
  - fair information practices, including respect for personal privacy and issues of consumer concern; and
  - freedom of expression.
4. Country code top level domains are operated in trust by the Registry for the public interest, including the interest of the Internet community, on behalf of the relevant public authorities including governments, who ultimately have public policy authority over their ccTLDs, consistent with universal connectivity of the Internet.

## **ARTICLE I – SCOPE OF THE GOVERNMENTAL ADVISORY COMMITTEE**

### **Principle 1**

The Governmental Advisory Committee (GAC) shall consider and provide advice on the activities of ICANN as they relate to concerns of governments, multinational governmental organisations and treaty organisations, and distinct economies as recognised in international fora, including matters where there may be an interaction between ICANN's policies and various laws and international agreements and public policy objectives.

### **Principle 2**

The GAC shall provide advice and communicate issues and views to the ICANN Board. The GAC is not a decision making body. Such advice given by the GAC shall be without prejudice to the responsibilities of any public authority with regard to the bodies and activities of ICANN, including the Supporting Organisations and Councils.

**Principle 3**

The GAC shall report its findings and recommendations in a timely manner to the ICANN Board through the Chair of the GAC.

**Principle 4**

The GAC shall operate as a forum for the discussion of government and other public policy interests and concerns.

**Principle 5**

The GAC shall have no legal authority to act for ICANN.

**ARTICLE II – MEETINGS**

**Principle 6**

The GAC shall meet at least once annually; notwithstanding this designated annual meeting, the GAC shall meet as appropriate.

**Principle 7**

A meeting may be convened on the initiative of the Chair, at the request of a Member or at the request of the ICANN Board, concurred in by one third (1/3) of the Current Membership.

**Principle 8**

Face-to-face meetings of the GAC shall be convened by the Chair, by a notice issued not less than twenty-eight (28) calendar days prior to the date set for the meeting. This notice may be issued electronically, via telefacsimile, or via airmail.

**Principle 9**

Online and electronic meetings of the GAC shall be convened by the Chair, by a notice issued not less than ten (10) calendar days prior to the date set for the meeting.

This notice may be issued electronically, via telefacsimile, or via airmail. GAC Documents  
Operating Principles

**Principle 10**

An emergency meeting of the GAC may be convened by the Chair, by a notice issued not less than ten (10) calendar days prior to the date set for the meeting. This notice may be issued electronically, via telefacsimile, or via airmail. Principle 11 In addition to face-to-face meetings, meetings and discussions may be conducted online via secure communications. "Online" includes electronic mail, web-based communications, and teleconferences.

### **ARTICLE III- AGENDA**

#### **Principle 12**

A proposed agenda for the meeting shall be communicated to Members prior to the meeting.

#### **Principle 13**

Requests for items to be placed on the agenda of a forthcoming meeting shall be communicated to the Secretariat of the GAC in writing, either via electronic mail, telefacsimile or airmail.

### **ARTICLE IV – MEMBERSHIP**

#### **Principle 14**

Members of the GAC shall be national governments, multinational governmental organisations and treaty organisations, and public authorities, each of which may appoint one representative and one alternate representative to the GAC. The accredited representative of a Member may be accompanied by advisers. The accredited representative, alternate and advisers must hold a formal official position with the Member's public administration. The term 'official' includes a holder of an elected governmental office or a person who is employed by such government, public authority or multinational governmental or treaty organisation, and whose primary function with such government, public authority or organisation is to develop or influence governmental or public policies.

#### **Principle 15**

Membership is open to all national governments. Membership is also open to distinct economies as recognised in international fora. Multinational governmental organisations and treaty organisations, may also participate as observers, on the invitation of the GAC through the Chair.

#### **Principle 16**

Accredited representatives of governments and other public authorities, Members of GAC, have voting rights. Accredited representatives of International Organisations and entities other than public authorities participate fully in the GAC and its Committees and Working Groups, as Observers, but do not have voting rights.

**Principle 17**

Those who constitute the Current Membership are defined as those Members from whom the Chair has received formal notification of the name and contact details of their accredited representative. The list of current Members shall be updated regularly and be posted online.

**ARTICLE V – OBSERVERS**

**Principle 18**

Representatives of invited UN Inter-governmental Organisations, non-member public authorities and other relevant entities may attend meetings of the GAC as observers, at the discretion of the Chair.

**ARTICLE VI – REPRESENTATION**

**Principle 19**

If a Member's accredited representative, or alternate representative, is not present at a meeting, then it shall be taken that the Member government or organisation is not represented at that meeting. Any decision made by the GAC without the participation of a Member's accredited representative shall stand and nonetheless be valid.

**Principle 20**

In consideration of the GAC's commitment to efficiency, there shall be no attendance or voting by proxy. Members may only be represented at meetings, both face-to-face and electronic, by their accredited representative, or designated alternate representative. GAC Documents Operating Principles (EN) GAC Operating Principles 6

**ARTICLE VII – CHAIR, VICE CHAIRS, OTHER OFFICERS AND COMMITTEES**

**Principle 21**

If the GAC moves to require additional officers other than the Chair, then three (3) Vice-Chairs shall be elected from among the Members. To the extent possible, the Vice-Chairs should appropriately reflect the geographic and development diversity of the membership. The Chair shall hold office for a term of two (2) years, renewable once. The

Vice-Chairs shall hold office for a term of one (1) year and may be re-elected; however no person may serve as Vice-Chair for more than two consecutive terms.

**Principle 22**

The GAC Chair and Vice Chairs shall be elected by the Members of the GAC from among the accredited representatives of governments and other public authorities, Members of GAC, pursuant to procedures outlined under Article IX (Election of Office Holders) of these Operating Principles. The elections of the Chair and Vice Chairs will be concurrent, as provided for in Principle 34.

**Principle 23**

The GAC may designate other officers as necessary.

**Principle 24**

The Chair shall normally participate in the proceedings as such and not as the accredited representative of a Member, in which case the Member may accredit another representative. The Chair may, however, at any time request permission to act in either capacity. The Vice Chairs shall participate in the proceedings as accredited representatives of a Member.

**Principle 25**

If the Chair is absent from any meeting or part thereof, one of the three (3) Vice-Chairs shall perform the functions of the Chair. If no Vice-Chairs were elected or if no Vice-Chair is present the GAC shall elect an interim Chair for that meeting or that part of the meeting.

**Principle 26**

If the Chair can no longer perform the functions of the office, the GAC shall designate one of the Vice-Chairs referred to in Principle 22 of these Operating Principles to perform those functions pending election of a new Chair in pursuant to procedures outlined under Article IX (Election of Chair and Vice Chairs) of these Operating Principles. If no Vice-Chair was elected, the GAC shall elect an interim Chair to perform those functions pending the election of a new Chair.

**Principle 27**

The Chair may call for the creation of Committees and Working Groups to address matters that relate to concerns of governments and where they may affect public policy issues. Accredited representatives may designate advisers to serve on such committees.

**ARTICLE VIII – POWERS OF THE CHAIR**

**Principle 28**

In addition to exercising the power conferred elsewhere by these Principles, the Chair shall declare the opening and closing of each meeting shall direct the discussion, accord the right to speak, submit questions for decisions, announce decisions, rule on points of order and subject to these rules, have control of the proceedings. The Chairperson may also call a speaker to order if the remarks of the speaker are not relevant.

**Principle 29**

The Chair, with the consent of the meeting, may limit the time allowed to each speaker.

**Principle 30**

The Chair shall not normally have voting power; however in the event of a tie, the Chair shall have a casting vote.

**ARTICLE IX – ELECTION OF CHAIR AND VICE CHAIRS**

**Principle 31**

Elections for the GAC Chair shall take place during the final meeting of every second year (even years) unless the Chair can no longer perform the functions of the office. If Chair can no longer perform the functions during the first year in the office, the elections shall be organized for the remaining term in the office during the next GAC meeting. If Chair can no longer perform the functions during the second year in the office, the GAC shall decide which of the Vice Chairs should replace the Chair until the regular elections are held.

Elections for the three Vice Chairs shall normally take place during the final meeting of the year. If Vice Chair can no longer perform the functions before the full term has finished, new elections shall be organized for the remaining term in the office during the next GAC meeting. The results of each election shall formally be announced at the end of any meeting in which an election has taken place, and shall take effect at the end of the next GAC meeting.

**Principle 32**

In the event of a single candidate he or she shall be elected by acclamation. If there is more than one candidate for the position of Chair, or more than 3 candidates for the positions of Vice Chairs, an election will be held. For elections, the candidate or

candidates with the most votes shall be elected to the position(s) that he or she has stood for.

In case of a tie ballot for two leading candidates, an additional ballot shall be held restricted to these candidates after an interval of at least one hour.

Elections shall be valid if more than 1/3 of the GAC members participate in the voting in person and by electronic mail. In case of the second round of voting, only present at the meeting GAC members participate.

**Principle 33**

Nominations for candidates to the official position of Chair and/or Vice Chair of the GAC shall normally start during the GAC meeting which precedes the meeting in which the confirmation is due to take place. In any event, the nomination procedure will close 45 days before the start of the meeting at which the confirmation of appointment is due to take place and a list of candidates should be posted on the GAC website within 14 days. In the event that there are more candidates than positions available, the GAC Chair will notify members that an election will be organized in accordance with principles 34 to 36 of this document.

**Principle 34**

For elections, votes shall be taken by secret ballot. It will be a matter for each voting Member to decide if they wish to make his or her choice public. This includes the taking of votes in person, or ballots transmitted by electronic mail. The GAC Secretariat will organize the voting procedure and count the votes under the supervision of the Chair or Vice Chairs who do not stand for re-election.

**Principle 35**

For votes to be taken in person, the GAC Secretariat will distribute ballot papers to Members' accredited representatives at that meeting, and arrange for a ballot box to be placed in the conference room.

**Principle 36**

Members unable to attend in person, should notify the Secretariat no less than 7 days before the beginning of the meeting in which the election is due to take place. They will then be provided with the opportunity to cast their votes by electronic mail addressed to the Secretariat, which shall then be added to the votes cast by other members during

the meeting. Any Member from whom a vote has not been received within such a time-limit shall be regarded as not voting.

## **ARTICLE X – CONDUCT OF BUSINESS**

### **Principle 40**

One third of the representatives of the Current Membership with voting rights shall constitute a quorum at any meeting. A quorum shall only be necessary for any meeting at which a decision or decisions must be made. The GAC may conduct its general business face-to-face or online.

A Member may initiate an online discussion of a question by forwarding to the Chair a request for the opening of an online discussion on a specific topic. The GAC Secretariat will initiate this discussion and all Members may post their contributions during a period of time established by the Chair, the period of which is to be no longer than sixty (60) calendar days. At the end of this discussion period, the Chair will summarise the results of the discussion and may forward the results to the ICANN Board. Nothing in this Principle overrides the decision making processes set out elsewhere in these Operating Principles.

### **Principle 41**

Representatives of Members shall endeavour, to the extent that a situation permits, to keep their oral statements brief. Representatives wishing to develop their position on a particular matter in fuller detail may circulate a written statement for distribution to Members.

### **Principle 42**

Representatives should make every effort to avoid the repetition of a full debate at each meeting on any issue that has already been fully debated in the past and on which there appears to have been no change in Members' positions already on record.

### **Principle 43**

In order to expedite the conduct of business, the Chair may invite representatives who wish to express their support for a given proposal to show their hands, in order to be duly recorded in the records of the GAC as supporting statements; thus only representatives with dissenting view or wishing to make explicit points or proposals would actually be invited to make a statement. This procedure shall only be applied in order to avoid undue repetition of points already made, and will not preclude any

representative who so wishes from taking the floor. GAC Documents Operating Principles (EN) GAC Operating Principles 10

## **ARTICLE XI – THE SECRETARIAT**

### **Principle 44**

The Secretariat of the Governmental Advisory Committee shall undertake such administrative, coordination, liaison and research activities as shall be necessary for the efficient functioning of the GAC. The Secretariat shall facilitate communications among the GAC Chair, Vice Chairs, other Officers, the GAC membership and with ICANN. The Secretariat participates in all GAC meetings.

### **Principle 45**

The Secretariat shall be financed by such means as shall be agreed by the GAC members .

## **ARTICLE XII – PROVISION OF ADVICE TO THE ICANN BOARD**

### **Principle 46**

Advice from the GAC to the ICANN Board shall be communicated through the Chair.

### **Principle 47**

The GAC works on the basis of seeking consensus among its membership. Consistent with United Nations practice<sup>1</sup>, consensus is understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection. Where consensus is not possible, the Chair shall convey the full range of views expressed by members to the ICANN Board.

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<sup>1</sup> In United Nations practice, the concept of “consensus” is understood to mean the practice of adoption of resolutions or decisions by general agreement without resort to voting in the absence of any formal objection that would stand in the way of a decision being declared adopted in that manner. Thus, in the event that consensus or general agreement is achieved, the resolutions and decisions of the United Nations meetings and conferences have been adopted without a vote. In this connection, it should be noted that the expressions “without a vote”, “by consensus” and “by general agreement” are, in the practice of the United Nations, synonymous and therefore interchangeable.

**Principle 48**

The GAC may deliver advice on any other matter within the functions and responsibilities of ICANN, at the request of the ICANN Board or on its own initiative. The ICANN Board shall consider any advice from the GAC prior to taking action.

**ARTICLE XII – RECORDS****Principle 49**

Records of the meetings of the GAC shall be in the form of Executive Minutes. GAC Documents Operating Principles (EN) GAC Operating Principles 11

**ARTICLE XIII – PUBLICITY OF MEETINGS****Principle 50**

The meetings of the GAC shall ordinarily be held in private. The Chair may decide that a particular meeting, or part of a particular meeting, should be held in public.

**Principle 51**

After a private meeting has been held, the Chair may issue a communiqué to the Media, such communiqué having been approved by the GAC beforehand.

**ARTICLE XIV – REVISION****Principle 52**

The GAC may decide at any time to revise these Operating Principles or any part of them.

**Principle 53**

A Member or Members may move, at a meeting, for these Operating Principles to be open to revision. If so moved, the Chair shall call for the movement to be seconded. If so seconded, then the Chair shall call for a vote to support the resolution. The deciding vote may be by ballot, by the raising of cards, or by roll call, and shall constitute a simple majority of the Members who are present at the meeting at which it was moved for these Operating Principles to be revised. If so resolved in favour of a revision of these Operating Principles, then the proposal shall sit for consultation for a period of sixty (60) days. At the next meeting following the sixty days, the Chair shall call for a vote for or against the proposal. The deciding vote may be taken by ballot, by the raising of cards,

or by roll call, and shall be a simple majority of the Members who are present at the meeting at which the vote takes place.

**ARTICLE XV – GENERAL PROVISIONS**

**Principle 54**

Whenever there is a difference in interpretation between the principles set out in these Operating Principles and ICANN’s Articles of Incorporation and Bylaws, ICANN’s Articles of Incorporation and Bylaws shall prevail.

**R-3**

**RESPONDENT'S EXHIBIT**

# **ICANN Generic Names Supporting Organisation**

## **Board Report**

### **Introduction of New Generic Top-Level Domains**

**11 September 2007**

# **Board Report & GNSO Council Final Report Part A & B**

## **Introduction of New Generic Top-Level Domains**

**INSERT UPDATED TOC**

## ABSTRACT

This is the Board Report for the Generic Names Supporting Organization (GNSO) Council's policy development process on the Introduction of New Top-Level Domains. The Report is in two parts. Part A includes the requirements for a Board Report in addition to the GNSO Council's *Final Report* which includes their substantive discussion of the Principles, Policy Recommendations and Implementation Guidelines. Part B of the *Final Report* contains a range of supplementary materials that have been used by the Committee during the course of the Policy Development Process, most notably detailed Constituency Statements, Expert Papers and other reference materials.

The process for the introduction of new generic top-level domains (gTLDs) is central to fostering choice and competition in domain registration services, and as such is significant to the promotion of ICANN's core values. The evolution of the namespace toward enhanced diversity of services and service providers must be planned and managed effectively to ensure that the security, stability, reliability, and global interoperability of the Internet is maintained.

The proposed policy that would guide the introduction of new gTLDs was created by the GNSO over the last two years through its bottom-up, multi-stakeholder policy development process. The GNSO received assistance from ICANN staff to help ensure that their final recommendations and guidelines are implementable. The questions that have been addressed by the GNSO in the development of new gTLD policy are complex and involve technical, economic, operational, legal, public policy, and other considerations. The intended result is a straightforward process that awards new gTLDs if they satisfy the criteria and no objections are sustained.

Readers wishing immediate access the core substance of the suggested approach are advised to focus first on the [Recommendations \(click to get](#)

[there](#)), which give the fundamentals, in part based on the agreed [Principles](#). Next, implementation advice is provided in the [Implementation Guidelines](#). Reading of the documents in full will provide the comprehensive advice and discussions regarding the GNSO's new gTLD's policy recommendations.

## BOARD REPORT REQUIREMENTS

- 1.1 This is the Board Report for the *Introduction of New Top-Level Domains*. According to the GNSO's policy development process, the Board Report must contain the following elements.
- a. A clear statement of any Supermajority Vote recommendation of the Council.  
  
The GNSO Council considered the *Final Report* and the results of the 20 day public comment period at its meeting on 6 September 2007.  
  
The GNSO Council voted on the package of recommendations as follows, as quoted from the minutes, [insert after minutes and MP3 recording completed]  
  
[The motion carried with a supermajority vote as defined in the ICANN bylaws, section 16 (<http://www.icann.org/general/archive-bylaws/bylaws-28feb06.htm#AnnexA>)]
  - b. If a Supermajority Vote was not reached, a clear statement of all positions held by Council members. Each statement should clearly indicate (i) the reasons underlying each position and (ii) the constituency(ies) that held the position;
  - c. An analysis of how the issue would affect each constituency, including any financial impact on the constituency; [this is included in full in the Constituency Statements found in Part B of the *Final Report* in addition to the supplementary Minority Statements submitted by the NCUC and the personal comments made by Ms Avri Doria which are found in the Part A Annexes]
  - d. An analysis of the period of time that would likely be necessary to implement the policy; [this is found in the Implementation Team *Discussion Points* document along with the draft RFP, the draft base contract and the instructions to applicants]
  - e. The advice of any outside advisors relied upon, which should be accompanied by a detailed statement of the advisor's (i) qualifications and relevant experience; and (ii) potential conflicts of interest; [these are found in full in Part B in the Supplementary Materials]
  - f. The Final Report submitted to the Council; [the Final Report is included in full in the sections below]
  - g. A copy of the minutes of the Council deliberation on the policy issue, including the all opinions expressed during such deliberation,

accompanied by a description of who expressed such opinions. [insert the minutes of the meeting are found in full below once complete. The MP3 recording of the meeting can be found here insert URL]

## BACKGROUND

Following a succession of activities relating to the introduction of new gTLDs, since the inception of ICANN (for a complete history see the Final Report), the initial step for a PDP on new gTLDs was taken on 22 September 2005 when the GNSO Council requested ICANN staff to produce an Issues Report on the topic of new TLDs. The requested report covered four issue areas:

- Whether to continue to introduce new gTLDs
- Criteria for approving applications for new gTLDs
- Allocation methods
- Contractual conditions.

The Issues Report was discussed at the GNSO Council meeting on 28 November 2005 and the GNSO Council voted unanimously to initiate a formal PDP on this matter. Notice of the new PDP, along with draft terms of reference for the new initiative and a call for public reactions and substantive papers were published on 6 December 2005, with a 31 January 2006 deadline for all submissions. Formal terms of reference for the PDP were approved at the 2 December 2005 GNSO Council meeting, with a separate motion confirming that the PDP would be undertaken as a “committee of the whole” chaired by the GNSO Council chair Bruce Tonkin, who eventually was succeeded in both these respects by Avri Doria in May 2007.

A mailing list for the New gTLD Committee was established on 17 January 2006, and a draft Initial report was published on 19 February 2006, with a public comment period ending on 3 March 2006. The final Initial Report was published on 15 March 2006. The first Draft Final Report was publicly circulated on 14 November 2006, along with a Staff memo recommending additional considerations in several areas. Further Draft Final Report versions were released during 2007 and the last draft version was subject to public comments from 10 to 30 August 2007. The ultimate Final Report, dated 29 August, was adopted with a supermajority vote by the GNSO Council on 6 September 2007.

# FINAL REPORT

## Background

1. The Internet Corporation for Assigned Names and Numbers (ICANN) is responsible for the overall coordination of “the global Internet's system of unique identifiers” and ensuring the “stable and secure operation of the Internet's unique identifier systems. In particular, ICANN coordinates the “allocation and assignment of the three sets of unique identifiers for the Internet”. These are “domain names”(forming a system called the DNS); Internet protocol (IP) addresses and autonomous system (AS) numbers and Protocol port and parameter numbers”. ICANN is also responsible for the “operation and evolution of the DNS root name server system and policy development reasonably and appropriately related to these technical functions”. These elements are all contained in ICANN's Mission and Core Values<sup>1</sup> in addition to provisions which enable policy development work that, once approved by the ICANN Board, become binding on the organization. The results of the policy development process found here relate to the introduction of new generic top-level domains.
2. This document is the *Final Report* of the Generic Names Supporting Organisation's (GNSO) Policy Development Process (PDP) that has been conducted using ICANN's Bylaws and policy development guidelines that relate to the work of the GNSO. This *Report* reflects a comprehensive examination of four Terms of Reference designed to establish a stable and ongoing process that facilitates the introduction of new top-level domains. The policy development process (PDP) is part of the Generic Names Supporting Organisation's (GNSO) mandate within the ICANN structure. However, close consultation with other ICANN Supporting Organisations and Advisory Committees has been an integral part of the process. The

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<sup>1</sup> <http://www.icann.org/general/archive-bylaws/bylaws-28feb06.htm#1>

- consultations and negotiations have also included a wide range of interested stakeholders from within and outside the ICANN community<sup>2</sup>.
3. The *Final Report* is in two parts. This document is Part A and contains the full explanation of each of the Principles, Recommendations and Implementation Guidelines that the Committee has developed since December 2005<sup>3</sup>. Part B of the *Report* contains a wide range of supplementary materials which have been used in the policy development process including Constituency Impact Statements (CIS), a series of Working Group Reports on important sub-elements of the Committee's deliberations, a collection of external reference materials, and the procedural documentation of the policy development process<sup>4</sup>.
  4. The finalisation of the policy for the introduction of new top-level domains is part of a long series of events that have dramatically changed the nature of the Internet. The 1969 ARPANET diagram shows the initial design of a network that is now global in its reach and an integral part of many lives and businesses. The policy recommendations found here illustrate the complexity of the Internet of 2007 and, as a package, propose a system to add new top-level domains in an orderly and transparent way. The ICANN Staff Implementation Team, consisting of policy, operational and legal staff members, has worked closely with the Committee on all aspects of the policy development process<sup>5</sup>. The ICANN Board has received regular information and updates about the process and the substantive results of the Committee's work.

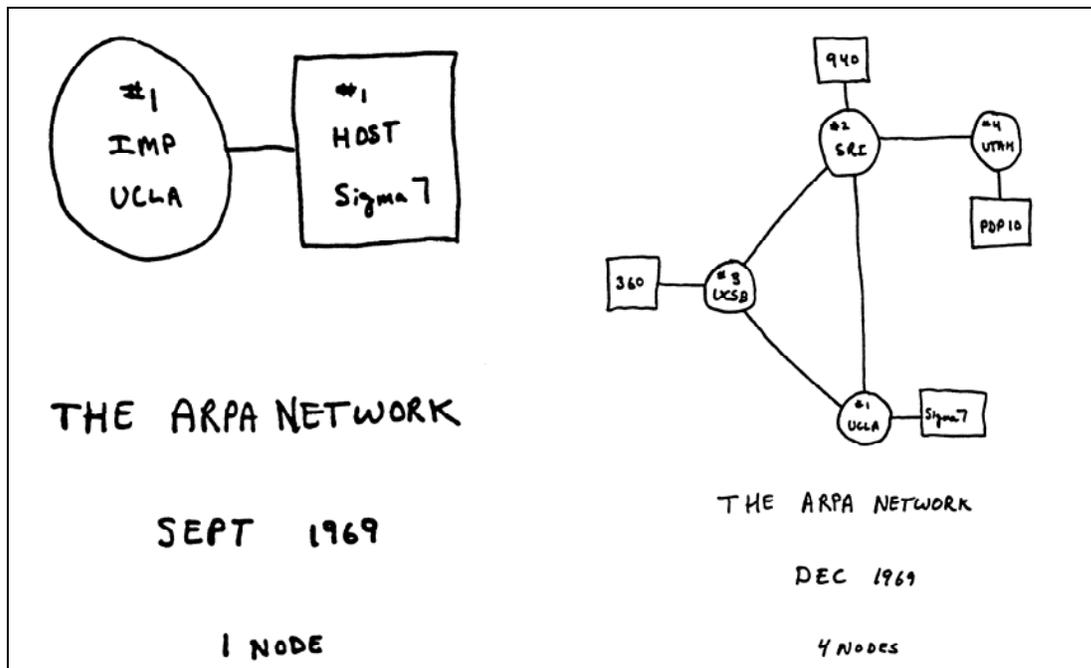
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<sup>2</sup> The ICANN "community" is a complex matrix of intersecting organizations and which are represented graphically here. <http://www.icann.org/structure/>

<sup>3</sup> The *Final Report* is Step 9 in the GNSO's policy development process which is set out in full at <http://www.icann.org/general/archive-bylaws/bylaws-28feb06.htm#AnnexA>.

<sup>4</sup> Found here <http://gnso.icann.org/issues/new-gtlds/>.

<sup>5</sup> The ICANN Staff *Discussion Points* documents can be found at <http://gnso.icann.org/drafts/GNSO-PDP-Dec05-StaffMemo-14Nov06.pdf> and <http://gnso.icann.org/drafts/PDP-Dec05-StaffMemo-19-jun-07.pdf>



5. The majority of the early work on the introduction of new top-level domains is found in the IETF's Request for Comment series. RFC 1034<sup>6</sup> is a fundamental resource that explains key concepts of the naming system. Read in conjunction with RFC920<sup>7</sup>, an historical picture emerges of how and why the domain name system hierarchy has been organised. Postel & Reynolds set out in their RFC920 introduction about the "General Purpose Domains" that "...While the initial domain name "ARPA" arises from the history of the development of this system and environment, in the future most of the top level names will be very general categories like "government", "education", or "commercial". The motivation is to provide an organization name that is free of undesirable semantics."
6. In 2007, the Internet is multi-dimensional and its development is driven by widespread access to inexpensive communications technologies in many

<sup>6</sup> Authored in 1987 by Paul Mockapetris and found at <http://www.ietf.org/rfc/rfc1034>

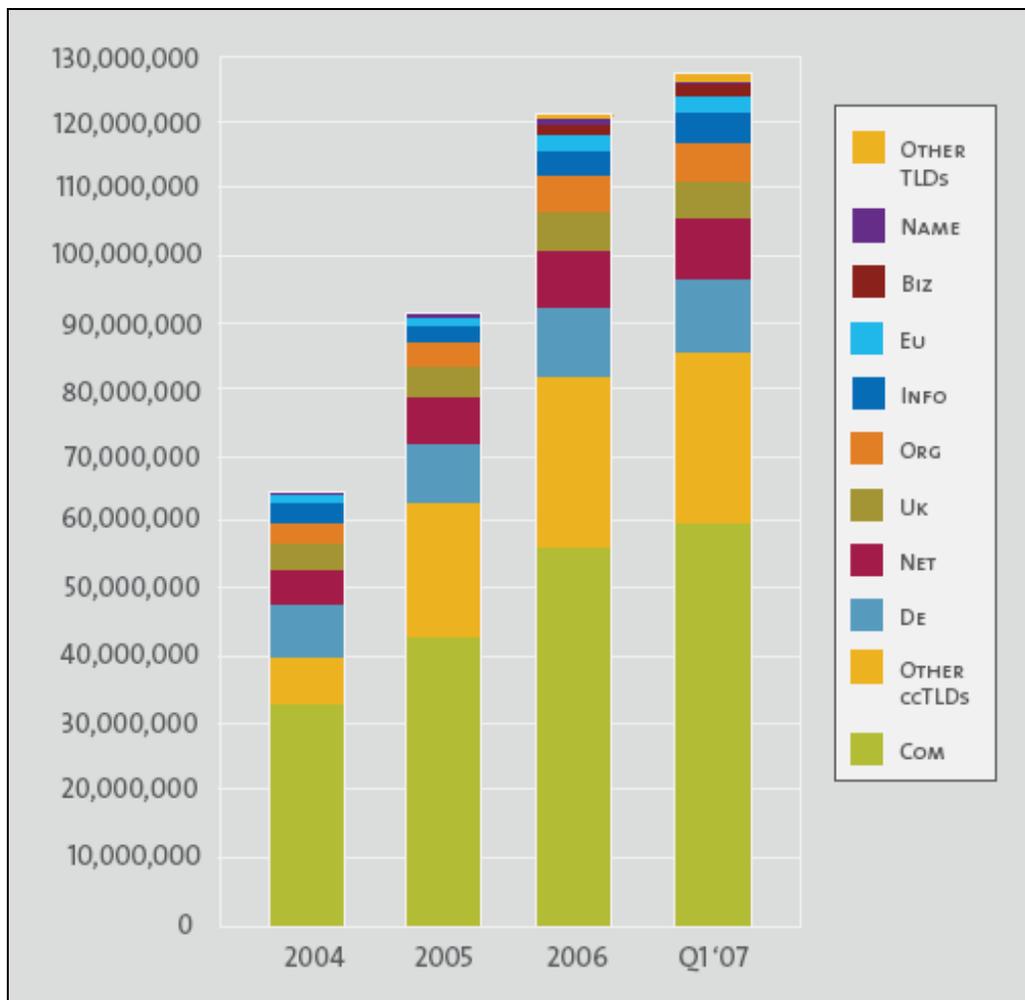
<sup>7</sup> Authored in October 1984 by Jon Postel and J Reynolds and found at <http://www.ietf.org/rfc/rfc920>

parts of the world. In addition, global travel is now relatively inexpensive, efficient and readily available to a diverse range of travellers. As a consequence, citizens no longer automatically associate themselves with countries but with international communities of linguistic, cultural or professional interests independent of physical location. Many people now exercise multiple citizenship rights, speak many different languages and quite often live far from where they were born or educated. The 2007 OECD *Factbook*<sup>8</sup> provides comprehensive statistics about the impact of migration on OECD member countries. In essence, many populations are fluid and changing due in part to easing labour movement restrictions but also because technology enables workers to live in one place and work in another relatively easily. As a result, companies and organizations are now global and operate across many geographic borders and jurisdictions. The following illustration<sup>9</sup> shows how rapidly the number of domain names under registration has increased and one could expect that trend to continue with the introduction of new top-level domains.

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<sup>8</sup> Found at <http://www.oecd.org/dataoecd/15/37/38336539.pdf>

<sup>9</sup> From Verisign's June 2007 *Domain Name Industry Brief*.



7. A key driver of change has been the introduction of competition in the registration of domain names through ICANN Accredited Registrars<sup>10</sup>. In June 2007, there were more than 800 accredited registrars who register names for end users with ongoing downward pressure on the prices end-users pay for domain name registration.

8. ICANN's work on the introduction of new top-level domains has been underway since 1999. By mid-1999, Working Group C<sup>11</sup> had quickly reached consensus on two issues, namely that "...ICANN should add new

<sup>10</sup> The full list is available here <http://www.icann.org/registrars/accredited-list.html>

<sup>11</sup> Report found at <http://www.icann.org/dnso/wgc-report-21mar00.htm>

- gTLDs to the root. The second is that ICANN should begin the deployment of new gTLDs with an initial rollout of six to ten new gTLDs, followed by an evaluation period". This work was undertaken throughout 2000 and saw the introduction of, for example, .coop, .aero and .biz.
9. After an evaluation period, a further round of sponsored TLDs was introduced during 2003 and 2004 which included, amongst others, .mobi and .travel<sup>12</sup>.
  10. The July 2007 zone file survey statistics from [www.registrarstats.com](http://www.registrarstats.com)<sup>13</sup> shows that there are slightly more than 96,000,000 top level domains registered across a selection of seven top-level domains including .com, .net and .info. Evidence from potential new applicants provides more impetus to implement a system that enables the ongoing introduction of new top level domains<sup>14</sup>. In addition, interest from Internet users who could use Internationalised Domain Names (IDNs) in a wide variety of scripts beyond ASCII is growing rapidly.
  11. To arrive at the full set of policy recommendations which are found here, the Committee considered the responses to a Call for Expert Papers issued at the beginning of the policy development process<sup>15</sup>, and which was augmented by a full set of GNSO Constituency Statements<sup>16</sup>. These are all found in Part B of the *Final Report* and should be read in conjunction with this document. In addition, the Committee received detailed responses from the Implementation Team about proposed policy recommendations and the implementation of the recommendations package as an on-line application process that could be used by a wide array of potential applicants.
  12. The Committee reviewed and analysed a wide variety of materials including Working Group C's findings, the evaluation reports from the 2003

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<sup>12</sup> Found at <http://www.icann.org/announcements/announcement-31aug04.htm>

<sup>13</sup> <http://www.registrarstats.com/Public/ZoneFileSurvey.aspx>

<sup>14</sup> Verisign produce a regular report on the domain name industry.

[http://www.verisign.com/Resources/Naming\\_Services\\_Resources/Domain\\_Name\\_Industry\\_Brief/index.html](http://www.verisign.com/Resources/Naming_Services_Resources/Domain_Name_Industry_Brief/index.html)

<sup>15</sup> The announcement is here <http://icann.org/announcements/announcement-03jan06.htm> and the results are here <http://gns0.icann.org/issues/new-gtlds/new-gtld-pdp-input.htm>

<sup>16</sup> Found here <http://gns0.icann.org/issues/new-gtlds/new-gtld-pdp-input.htm>

& 2004 round of sponsored top-level domains and a full range of other historic materials<sup>17</sup>.

13. In the past, a number of different approaches to new top level domains have been considered including the formulation of a structured taxonomy<sup>18</sup> of names, for example, .auto, .books, .travel and .music. The Committee has opted to enable potential applicants to self-select strings that are either the most appropriate for their customers or potentially the most marketable. It is expected that applicants will apply for targeted community strings such as .travel for the travel industry and .cat for the Catalan community as well as some generic strings. The Committee identified five key drivers for the introduction of new top-level domains.

- (i) It is consistent with the reasons articulated in 1999 when the first proof-of-concept round was initiated
- (ii) There are no technical impediments to the introduction of new top-level domains as evidenced by the two previous rounds
- (iii) Expanding the domain name space to accommodate the introduction of both new ASCII and internationalised domain name (IDN) top-level domains will give end users more choice about the nature of their presence on the Internet. In addition, users will be able to use domain names in their language of choice.
- (iv) There is demand for additional top-level domains as a business opportunity. The GNSO Committee expects that this business opportunity will stimulate competition at the registry service level which is consistent with ICANN's Core Value 6.

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<sup>17</sup> <http://gnso.icann.org/issues/new-gtlds/>

<sup>18</sup> For example, see the GA List discussion thread found at <http://gnso.icann.org/mailing-lists/archives/ga/msg03337.html> & earlier discussion on IANA lists <http://www.iana.org/comments/26sep1998-02oct1998/msg00016.html>. The 13 June 2002 paper regarding a taxonomy for non-ASCII TLDs is also illuminating <http://www.icann.org/committees/idn/registry-selection-paper-13jun02.htm>

- (v) No compelling reason has been articulated to not proceed with accepting applications for new top-level domains.

14. The remainder of this Report is structured around the four *Terms of Reference*. This includes an explanation of the Principles that have guided the work taking into account the Governmental Advisory Committee's March 2007 *Public Policy Principles for New gTLDs*<sup>19</sup>; a comprehensive set of Recommendations which has majority Committee support and a set of Implementation Guidelines which has been discussed in great detail with the ICANN Staff Implementation Team. The Implementation Team has released two *ICANN Staff Discussion Points* documents (in November 2006 and June 2007). Version 2 provides detailed analysis of the proposed recommendations from an implementation standpoint and provides suggestions about the way in which the implementation plan may come together. The ICANN Board will make the final decision about the actual structure of the application and evaluation process.

15. In each of the sections below the Committee's recommendations are discussed in more detail with an explanation of the rationale for the decisions. The recommendations have been the subject of numerous public comment periods and intensive discussion across a range of stakeholders including ICANN's GNSO Constituencies, ICANN Supporting Organisations and Advisory Committees and members of the broader Internet-using public that is interested in ICANN's work<sup>20</sup>. In particular, detailed work has been conducted through the Internationalised Domain Names Working Group (IDN-WG)<sup>21</sup>, the Reserved Names Working Group (RN-WG)<sup>22</sup> and the Protecting the Rights of Others Working Group (PRO-WG)<sup>23</sup>. The Working Group Reports are found in full in Part B of the *Final Report* along with the March 2007 GAC *Public*

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<sup>19</sup> Found here [http://gac.icann.org/web/home/gTLD\\_principles.pdf](http://gac.icann.org/web/home/gTLD_principles.pdf)

<sup>20</sup> A list of the working materials of the new TLDs Committee can be found at <http://gnso.icann.org/issues/new-gtlds/>.

<sup>21</sup> The Outcomes Report for the IDN-WG is found <http://gnso.icann.org/drafts/idn-wg-fr-22mar07.htm>. A full set of resources which the WG is using is found at <http://gnso.icann.org/issues/idn-tlds/>.

<sup>22</sup> The Final Report of the RN-WG is found at <http://gnso.icann.org/drafts/rn-wg-fr19mar07.pdf>

<sup>23</sup> The Final Report of the PRO-WG is found at <http://gnso.icann.org/drafts/GNSO-PRO-WG-final-01Jun07.pdf>

*Policy Principles for New Top-Level Domains, Constituency Impact*  
Statements. A minority statement from the NCUC about Recommendations 6  
& 20 are found Annexes for this document along with individual comments  
from Nominating Committee appointee Ms Avri Doria.

## SUMMARY -- PRINCIPLES, RECOMMENDATIONS & IMPLEMENTATION GUIDELINES

1. This section sets out, in table form, the set of Principles, proposed Policy Recommendations and Guidelines that the Committee has derived through its work. The addition of new gTLDs will be done in accordance with ICANN's primary mission which is to ensure the security and stability of the DNS and, in particular, the Internet's root server system<sup>24</sup>.
2. The Principles are a combination of GNSO Committee priorities, ICANN staff implementation principles developed in tandem with the Committee and the March 2007 GAC Public Policy Principles on New Top-Level Domains. The Principles are supported by all GNSO Constituencies.<sup>25</sup>
3. ICANN's Mission and Core Values were key reference points for the development of the Committee's Principles, Recommendations and Implementation Guidelines. These are referenced in the right-hand column of the tables below.
4. The Principles have support from all GNSO Constituencies.

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<sup>24</sup> The root server system is explained here <http://en.wikipedia.org/wiki/Rootserver>

<sup>25</sup> Ms Doria supports all of the Principles but expressed concern about Principle B by saying "...While I strongly support the introduction of IDN TLDS, I am concerned that the unresolved issues with IDN ccTLD equivalents may interfere with the introduction of IDN TLDs. I am also concerned that some of these issues could impede the introduction of some new ASCII TLDs dealing with geographically related identifiers" and Principle D "...While I favor the establishment of a minimum set of necessary technical criteria, I am concerned that this set actually be the basic minimum set necessary to protect the stability, security and global interoperability."

	PRINCIPLES	MISSION & CORE VALUES
A	New generic top-level domains (gTLDs) must be introduced in an orderly, timely and predictable way.	M1 & CV1 & 2, 4-10
B	Some new generic top-level domains should be internationalised domain names (IDNs) subject to the approval of IDNs being available in the root.	M1-3 & CV 1, 4 & 6
C	The reasons for introducing new top-level domains include that there is demand from potential applicants for new top-level domains in both ASCII and IDN formats. In addition the introduction of new top-level domain application process has the potential to promote competition in the provision of registry services, to add to consumer choice, market differentiation and geographical and service-provider diversity.	M3 & CV 4-10
D	A set of technical criteria must be used for assessing a new gTLD registry applicant to minimise the risk of harming the operational stability, security and global interoperability of the Internet.	M1-3 & CV 1
E	A set of capability criteria for a new gTLD registry applicant must be used to provide an assurance that an applicant has the capability to meet its obligations under the terms of ICANN's registry agreement.	M1-3 & CV 1
F	A set of operational criteria must be set out in contractual conditions in the registry agreement to ensure compliance with ICANN policies.	M1-3 & CV 1
G	The string evaluation process must not infringe the applicant's freedom of expression rights that are protected under internationally recognized principles of law.	

	RECOMMENDATIONS <sup>26</sup>	MISSION & CORE VALUES
1	<p>ICANN must implement a process that allows the introduction of new top-level domains.</p> <p>The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination.</p> <p>All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process.</p>	M1-3 & CV1-11
2	Strings must not be confusingly similar to an existing top-level domain or a Reserved Name.	M1-3 & C1-6-11
3	<p>Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law.</p> <p>Examples of these legal rights that are internationally recognized include, but are not limited to, rights defined in the Paris Convention for the Protection of Industry Property (in particular trademark rights), the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) (in particular freedom of expression rights).</p>	CV3
4	Strings must not cause any technical instability.	M1-3 & CV 1
5	Strings must not be a Reserved Word <sup>27</sup> .	M1-3 & CV 1 & 3

<sup>26</sup> Note the updated recommendation text sent to the gTLD-council list after the 7 June meeting. <http://forum.icann.org/lists/gTLD-council/msg00520.html>

<sup>27</sup> Reserved word limitations will be included in the base contract that will be available to applicants prior to the start of the application round.

6*	<p>Strings must not be contrary to generally accepted legal norms relating to morality and public order that are recognized under international principles of law.</p> <p>Examples of such principles of law include, but are not limited to, the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the International Convention on the Elimination of All Forms of Racial Discrimination, intellectual property treaties administered by the World Intellectual Property Organisation (WIPO) and the WTO Agreement on Trade-Related Aspects of Intellectual Property (TRIPS).</p>	M3 & CV 4
7	Applicants must be able to demonstrate their technical capability to run a registry operation for the purpose that the applicant sets out.	M1-3 & CV1
8	Applicants must be able to demonstrate their financial and organisational operational capability.	M1-3 & CV1
9	There must be a clear and pre-published application process using objective and measurable criteria.	M3 & CV6-9
10	There must be a base contract provided to applicants at the beginning of the application process.	CV7-9
11	[Replaced with Recommendation 20 and Implementation Guideline P and inserted into Term of Reference 3 Allocation Methods section]	
12	Dispute resolution and challenge processes must be established prior to the start of the process.	CV7-9
13	Applications must initially be assessed in rounds until the scale of demand is clear.	CV7-9
14	The initial registry agreement term must be of a commercially reasonable length.	CV5-9

15	There must be renewal expectancy.	CV5-9
16	Registries must apply existing Consensus Policies and adopt new Consensus Policies as they are approved.	CV5-9
17	A clear compliance and sanctions process must be set out in the base contract which could lead to contract termination.	M1 & CV1
18	If an applicant offers an IDN service, then ICANN's IDN guidelines <sup>28</sup> must be followed.	M1 & CV1
19	Registries must use only ICANN accredited registrars in registering domain names and may not discriminate among such accredited registrars.	M1 & CV1
20*	An application will be rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be explicitly or implicitly targeted.	

\* The NCUC submitted Minority Statements on Recommendations 6 and 20. The remainder of the Recommendations have support from all GNSO Constituencies.

	IMPLEMENTATION GUIDELINES	MISSION & CORE VALUES
IG A	The application process will provide a pre-defined roadmap for applicants that encourages the submission of applications for new top-level domains.	CV 2, 5, 6, 8 & 9
IG B	Application fees will be designed to ensure that adequate resources exist to cover the total cost to administer the new gTLD process.  Application fees may differ for applicants.	CV 5, 6, 8 & 9
IG C	ICANN will provide frequent communications with applicants and the public including comment forums.	CV 9 & 10
IG D	A first come first served processing schedule within the application round will be implemented and will continue	CV 8-

<sup>28</sup> <http://www.icann.org/general/idn-guidelines-22feb06.htm>

	for an ongoing process, if necessary.	10
	Applications will be time and date stamped on receipt.	
IG E	The application submission date will be at least four months after the issue of the Request for Proposal and ICANN will promote the opening of the application round.	CV 9 & 10
IG F*	If there is contention for strings, applicants may <sup>29</sup> : <ul style="list-style-type: none"> <li>i) resolve contention between them within a pre-established timeframe</li> <li>ii) if there is no mutual agreement, a claim to support a community by one party will be a reason to award priority to that application. If there is no such claim, and no mutual agreement a process will be put in place to enable efficient resolution of contention and;</li> <li>iii) the ICANN Board may be used to make a final decision, using advice from staff and expert panels.</li> </ul>	CV 7-10
IG H*	Where an applicant lays any claim that the TLD is intended to support a particular community such as a sponsored TLD, or any other TLD intended for a specified community, that claim will be taken on trust with the following exceptions: <ul style="list-style-type: none"> <li>(i) the claim relates to a string that is also subject to another application and the claim to support a community is being used to gain priority for the application; and</li> <li>(ii) a formal objection process is initiated.</li> </ul> <p>Under these exceptions, Staff Evaluators will devise criteria and procedures to investigate the claim.</p>	CV 7 - 10

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<sup>29</sup> The Implementation Team sought advice from a number of auction specialists and examined other industries in which auctions were used to make clear and binding decisions. Further expert advice will be used in developing the implementation of the application process to ensure the fairest and most appropriate method of resolving contention for strings.

	Under exception (ii), an expert panel will apply the process, guidelines, and definitions set forth in IG P.	
IG H	External dispute providers will give decisions on objections.	CV 10
IG I	An applicant granted a TLD string must use it within a fixed timeframe which will be specified in the application process.	CV 10
IG J	The base contract should balance market certainty and flexibility for ICANN to accommodate a rapidly changing market place.	CV 4-10
IG K	ICANN should take a consistent approach to the establishment of registry fees.	CV 5
IG L	The use of personal data must be limited to the purpose for which it is collected.	CV 8
IG M	ICANN may establish a capacity building and support mechanism aiming at facilitating effective communication on important and technical Internet governance functions in a way that no longer requires all participants in the conversation to be able to read and write English <sup>30</sup> .	CV 3 - 7
IG N	ICANN may put in place a fee reduction scheme for gTLD applicants from economies classified by the UN as least developed.	CV 3 - 7
IG O	ICANN may put in place systems that could provide information about the gTLD process in major languages other than English, for example, in the six working languages of the United Nations.	CV 8 -10
IG P*	The following process, definitions and guidelines refer to Recommendation 20.	

### **Process**

Opposition must be objection based.

Determination will be made by a dispute resolution panel

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<sup>30</sup> Detailed work is being undertaken, lead by the Corporate Affairs Department, on establishing a translation framework for ICANN documentation. This element of the Implementation Guidelines may be addressed separately.

constituted for the purpose.

The objector must provide verifiable evidence that it is an established institution of the community (perhaps like the RSTEP pool of panelists from which a small panel would be constituted for each objection).

### **Guidelines**

The task of the panel is the determination of substantial opposition.

- a) **substantial** – in determining substantial the panel will assess the following: signification portion, community, explicitly targeting, implicitly targeting, established institution, formal existence, detriment
- b) **significant portion** – in determining significant portion the panel will assess the balance between the level of objection submitted by one or more established institutions and the level of support provided in the application from one or more established institutions. The panel will assess significance proportionate to the explicit or implicit targeting.
- c) **community** – community should be interpreted broadly and will include, for example, an economic sector, a cultural community, or a linguistic community. It may be a closely related community which believes it is impacted.
- d) **explicitly targeting** – explicitly targeting means there is a description of the intended use of the TLD in the application.
- e) **implicitly targeting** – implicitly targeting means that the objector

makes an assumption of targeting or that the objector believes there may be confusion by users over its intended use.

- f) **established institution** – an institution that has been in formal existence for at least 5 years. In exceptional cases, standing may be granted to an institution that has been in existence for fewer than 5 years.

Exceptional circumstances include but are not limited to a re-organization, merger or an inherently younger community.

The following ICANN organizations are defined as established institutions: GAC, ALAC, GNSO, ccNSO, ASO.

- g) **formal existence** – formal existence may be demonstrated by appropriate public registration, public historical evidence, validation by a government, intergovernmental organization, international treaty organization or similar.
- h) **detriment** – the objector must provide sufficient evidence to allow the panel to determine that there would be a likelihood of detriment to the rights or legitimate interests of the community or to users more widely.

IG Q ICANN staff will provide an automatic reply to all those who submit public comments that will explain the objection procedure.

IG R Once formal objections or disputes are accepted for review there will be a cooling off period to allow parties to resolve the dispute or objection before review by the panel is initiated.

\* The NCUC submitted Minority Statements on Implementation Guidelines F, H & P. The remainder of the Implementation Guidelines have support from all GNSO Constituencies.

1. This set of implementation guidelines is the result of detailed discussion, particularly with respect to the two *ICANN Staff Discussion Points*<sup>31</sup> documents that were prepared to facilitate consultation with the GNSO Committee about the implementation impacts of the proposed policy Recommendations. The Implementation Guidelines will be used to inform the final Implementation Plan which is approved by the ICANN Board
2. The *Discussion Points* documents contain draft flowcharts which have been developed by the Implementation Team and which will be updated, based on the final vote of the GNSO Council and the direction of the ICANN Board. The *Discussion Points* documents have been used in the ongoing internal implementation discussions that have focused on ensuring that draft recommendations proposed by the Committee are implementable in an efficient and transparent manner<sup>32</sup>. The flowchart setting out the proposed Contention Evaluation Process is a more detailed component within the Application Evaluation Process and will be amended to take into account the inputs from Recommendation 20 and its related Implementation Guidelines.
3. This policy development process has been designed to produce a systemised and ongoing mechanism for applicants to propose new top-level domains. The Request for Proposals (RFP) for the first round will include scheduling information for the subsequent rounds to occur within one year. After the first round of new applications, the application system will be evaluated by ICANN's TLDs Project Office to assess the effectiveness of the application system. Success metrics will be developed and any necessary adjustments made to the process for subsequent rounds.
4. The following sections set out in detail the explanation for the Committee's recommendations for each Term of Reference.

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<sup>31</sup> <http://gnso.icann.org/drafts/GNSO-PDP-Dec05-StaffMemo-14Nov06.pdf>

<sup>32</sup> Consistent with ICANN's commitments to accountability and transparency found at <http://www.icann.org/announcements/announcement-26jan07b.htm>

## TERM OF REFERENCE ONE -- WHETHER TO INTRODUCE NEW TOP-LEVEL DOMAINS

1. **Recommendation 1 Discussion – All GNSO Constituencies supported the introduction of new top-level domains.**
2. The GNSO Committee was asked to address the question of whether to introduce new top-level domains. The Committee recommends that ICANN should implement a process that allows the introduction of new top level domains and that work should proceed to develop policies that will enable the introduction of new generic top-level domains, taking into account the recommendations found in the latter sections of the *Report* concerning Selection Criteria (Term of Reference 2), Allocation Methods (Term of Reference 3) and Policies for Contractual Conditions (Term of Reference 4).
3. ICANN's work on the introduction of new top-level domains has been ongoing since 1999. The early work included the 2000 Working Group C Report<sup>33</sup> that also asked the question of "whether there should be new TLDs". By mid-1999, the Working Group had quickly reached consensus on two issues, namely that "...ICANN should add new gTLDs to the root. The second is that ICANN should begin the deployment of new gTLDs with an initial rollout of six to ten new gTLDs, followed by an evaluation period". This work was undertaken throughout 2000 and saw the introduction of, for example, .coop, .aero and .biz.
4. After an evaluation period, a further round of sponsored TLDs was introduced during 2003 and 2004 which included, amongst others, .mobi and .travel.
5. In addressing Term of Reference One, the Committee arrived at its recommendation by reviewing and analysing a wide variety of materials including Working Group C's findings; the evaluation reports from the 2003-

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<sup>33</sup> Found at <http://www.icann.org/dns/wgc-report-21mar00.htm>

2004 round of sponsored top-level domains and full range of other historic materials which are posted at <http://gnso.icann.org/issues/new-gtlds/>

6. In addition, the Committee considered the responses to a Call for Expert Papers issued at the beginning of the policy development process<sup>34</sup>. These papers augmented a full set of GNSO Constituency Statements<sup>35</sup> and a set of Constituency Impact Statements<sup>36</sup> that addressed specific elements of the Principles, Recommendations and Implementation Guidelines.
7. The Committee was asked, at its February 2007 Los Angeles meeting, to confirm its rationale for recommending that ICANN introduce new top-level domains. In summary, there are five threads which have emerged:
  - (i) It is consistent with the reasons articulated in 1999 when the first proof-of-concept round was initiated
  - (ii) There are no technical impediments to the introduction of new top-level domains as evidenced by the two previous rounds
  - (iii) It is hoped that expanding the domain name space to accommodate the introduction of both new ASCII and internationalised domain name (IDN) top-level domains will give end users more choice about the nature of their presence on the Internet. In addition, users will be able to use domain names in their language of choice.
  - (iv) In addition, the introduction of a new top-level domain application process has the potential to promote competition in the provision of registry services, and to add to consumer choice, market differentiation and geographic and service-provider diversity which is consistent with ICANN's Core Value 6.
  - (v) No compelling reason has been articulated to not proceed with accepting applications for new top-level domains.

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<sup>34</sup> The announcement is here <http://icann.org/announcements/announcement-03jan06.htm> and the results are here <http://gnso.icann.org/issues/new-gtlds/new-gtld-pdp-input.htm>

<sup>35</sup> Found here <http://gnso.icann.org/issues/new-gtlds/new-gtld-pdp-input.htm>

<sup>36</sup> Found here <http://forum.icann.org/lists/gtld-council/>

8. Article X, Part 7, Section E of the GNSO's Policy Development Process requires the submission of "constituency impact statements" which reflect the potential implementation impact of policy recommendations. By 4 July 2007 all GNSO Constituencies had submitted Constituency Impact Statements (CIS) to the gtld-council mailing list<sup>37</sup>. Each of those statements is referred to throughout the next sections<sup>38</sup> and are found in full in Part B of the *Report*. The NCUC submitted Minority Statements on Recommendations 6 & 20 and on Implementation Guidelines F, H & P. These statements are found in full here in Annex A & C, respectively, as they relate specifically to the finalised text of those two recommendations. GNSO Committee Chair and Nominating Committee appointee Ms Avri Doria also submitted individual comments on the recommendation package. Her comments are found in Annex B here.

9. All Constituencies support the introduction of new TLDs particularly if the application process is transparent and objective. For example, the ISPCP said that, "...the ISPCP is highly supportive of the principles defined in this section, especially with regards to the statement in [principle A] (A): New generic top-level domains must be introduced in an orderly, timely and predictable way. Network operators and ISPs must ensure their customers do not encounter problems in addressing their emails, and in their web searching and access activities, since this can cause customer dissatisfaction and overload help-desk complaints. Hence this principle is a vital component of any addition sequence to the gTLD namespace. The various criteria as defined in D, E and F, are also of great importance in contributing to minimise the risk of moving forward with any new gTLDs, and our constituency urges ICANN to ensure they are scrupulously observed during the applications evaluation process". The Business Constituency's (BC) CIS said that "...If the outcome is the best possible there will be a beneficial impact on business

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<sup>37</sup> Archived at <http://forum.icann.org/lists/gtld-council/>

<sup>38</sup> Business Constituency <http://forum.icann.org/lists/gtld-council/msg00501.html>, Intellectual Property Constituency <http://forum.icann.org/lists/gtld-council/msg00514.html>, Internet Service Providers <http://forum.icann.org/lists/gtld-council/msg00500.html>, NCUC <http://forum.icann.org/lists/gtld-council/msg00530.html>, Registry Constituency <http://forum.icann.org/lists/gtld-council/msg00494.html>

users from: a reduction in the competitive concentration in the Registry sector; increased choice of domain names; lower fees for registration and ownership; increased opportunities for innovative on-line business models.” The Registrar Constituency (RC) agreed with this view stating that “...new gTLDs present an opportunity to Registrars in the form of additional products and associated services to offer to its customers. However, that opportunity comes with the costs of implementing the new gTLDs as well as the efforts required to do the appropriate business analysis to determine which of the new gTLDs are appropriate for its particular business model.”

10. The Registry Constituency (RyC) said that “...Regarding increased competition, the RyC has consistently supported the introduction of new gTLDs because we believe that: there is a clear demand for new TLDs; competition creates more choices for potential registrants; introducing new TLDs with different purposes increases the public benefit; new gTLDs will result in creativity and differentiation in the domain name industry; the total market for all TLDs, new and old, will be expanded.” In summary, the Committee recommended, “ICANN must implement a process that allows the introduction of new top-level domains. The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination. All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process”. Given that this recommendation has support from all Constituencies, the following sections set out the other Terms of Reference recommendations.

## TERM OF REFERENCE -- SELECTION CRITERIA

### 1. Recommendation 2 Discussion -- Strings must not be confusingly similar to an existing top-level domain.

- i) This recommendation has support from all the GNSO Constituencies. Ms Doria accepted the recommendation with the concern expressed below<sup>39</sup>.
- ii) The list of existing top-level domains is maintained by IANA and is listed in full on ICANN's website<sup>40</sup>. Naturally, as the application process enables the operation of new top-level domains this list will get much longer and the test more complex. The RyC, in its Impact Statement, said that "...This recommendation is especially important to the RyC. ... It is of prime concern for the RyC that the introduction of new gTLDs results in a ubiquitous experience for Internet users that minimizes user confusion. gTLD registries will be impacted operationally and financially if new gTLDs are introduced that create confusion with currently existing gTLD strings or with strings that are introduced in the future. There is a strong possibility of significant impact on gTLD registries if IDN versions of existing ASCII gTLDs are introduced by registries different than the ASCII gTLD registries. Not only could there be user

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<sup>39</sup> "My concern involves using definitions that rely on legal terminology established for trademarks for what I believe should be a policy based on technical criteria.

In the first instance I believe that this is essentially a technical issue that should have been resolved with reference to typography, homologues, orthographic neighbourhood, transliteration and other technically defined attributes of a name that would make it unacceptable. There is a large body of scientific and technical knowledge and description in this field that we could have drawn on.

By using terms that rely on the legal language of trademark law, I believe we have created an implicit redundancy between recommendations 2 and 3. I.e., I believe both 2 and 3 can be used to protect trademarks and other intellectual property rights, and while 3 has specific limitations, 2 remains open to full and varied interpretation.

As we begin to consider IDNs, I am concerned that the interpretations of confusingly similar may be used to eliminate many potential TLDs based on translation. That is, when a translation may have the same or similar meaning to an existing TLD, that the new name may be eliminated because it is considered confusing to users who know both languages."

<sup>40</sup> <http://data.iana.org/TLD/tlds-alpha-by-domain.txt>

confusion in both email and web applications, but dispute resolution processes could be greatly complicated.” The ISPCP also stated that this recommendation was “especially important in the avoidance of any negative impact on network activities.” The RC stated that “...Registrars would likely be hesitant to offer confusingly similar gTLDs due to customer demand and support concerns. On the other hand, applying the concept too broadly would inhibit gTLD applicants and ultimately limit choice to Registrars and their customers”.

- iii) There are two other key concepts within this recommendation. The first is the issue of “confusingly similar”<sup>41</sup> and the second “likelihood of confusion”. There is extensive experience within the Committee with respect to trademark law and the issues found below have been discussed at length, both within the Committee and amongst the Implementation Team.
- iv) The Committee used a wide variety of existing law<sup>42</sup>, international treaty agreements and covenants to arrive at a common understanding that strings should not be confusingly similar either to existing top-level domains like .com and .net or to existing trademarks<sup>43</sup>. For example, the Committee considered the World Trade Organisation’s TRIPS agreement, in particular Article 16 which discusses the rights which are

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<sup>41</sup> See section 4A -- <http://www.icann.org/udrp/udrp-policy-24oct99.htm>.

<sup>42</sup> In addition to the expertise within the Committee, the NCUC provided, as part of its Constituency Impact Statement expert outside advice from Professor Christine Haight Farley which said, in part, “...A determination about whether use of a mark by another is “confusingly similar” is simply a first step in the analysis of infringement. As the committee correctly notes, account will be taken of visual, phonetic and conceptual similarity. But this determination does not end the analysis. Delta Dental and Delta Airlines are confusingly similar, but are not like to cause confusion, and therefore do not infringe. ... In trademark law, where there is confusing similarity and the mark is used on similar goods or services, a likelihood of confusion will usually be found. European trademark law recognizes this point perhaps more readily than U.S. trademark law. As a result, sometimes “confusingly similar” is used as shorthand for “likelihood of confusion”. However, these concepts must remain distinct in domain name policy where there is no opportunity to consider how the mark is being used.”

<sup>43</sup> In addition, advice was sought from experts within WIPO who continue to provide guidance on this and other elements of dispute resolution procedures.

conferred to a trademark owner.<sup>44</sup> In particular, the Committee agreed upon an expectation that strings must avoid increasing opportunities for entities or individuals, who operate in bad faith and who wish to defraud consumers. The Committee also considered the Universal Declaration of Human Rights<sup>45</sup> and the International Covenant on Civil and Political Rights which address the “freedom of expression” element of the Committee’s deliberations.

- v) The Committee also benefited from the work of the Protecting the Rights of Others Working Group (PRO-WG). The PRO-WG presented its *Final Report*<sup>46</sup> to the Committee at the June 2007 San Juan meeting. The Committee agreed that the Working Group could develop some reference implementation guidelines on rights protection mechanisms that may inform potential new TLD applicants during the application process. A small ad-hoc group of interested volunteers are preparing those materials for consideration by the Council by mid-October 2007.
- vi) The Committee had access to a wide range of differing approaches to rights holder protection mechanisms including the United Kingdom, the USA, Jordan, Egypt and Australia<sup>47</sup>.

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<sup>44</sup> Kristina Rosette provided the reference to the *Agreement on Trade-Related Aspects of Intellectual Property Rights* which is found online at [http://www.wto.org/english/tratop\\_e/trips\\_e/t\\_agm1\\_e.htm](http://www.wto.org/english/tratop_e/trips_e/t_agm1_e.htm)

“...*Article 16* Rights Conferred 1. The owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. The rights described above shall not prejudice any existing prior rights, nor shall they affect the possibility of Members making rights available on the basis of use....”

<sup>45</sup> <http://www.ohchr.org/english/bodies/hrc/comments.htm>

<sup>46</sup> <http://gnso.icann.org/drafts/GNSO-PRO-WG-final-01Jun07.pdf>

<sup>47</sup> Charles Sha’ban provided a range of examples from Arabic speaking countries. For example, in Jordan, Article 7 Trademarks eligible for registration are 1- A trademark shall be registered if it is distinctive, as to words, letters, numbers, figures, colors, or other signs or any combination thereof and visually perceptible. 2- For the purposes of this Article, "distinctive" shall mean applied in a manner which secures distinguishing the goods of the proprietor of the trademark from those of other persons. Article 8 Marks which may not be registered as trademarks. The following may not be registered as trademarks: 10- A mark identical with one belonging to a different proprietor which is already entered in the register in respect of the same goods or class of goods for which the mark is

vii) In addition, the Committee referred to the 1883 *Paris Convention on the Protection of Industrial Property*<sup>48</sup>. It describes the notion of confusion and describes creating confusion as “to create confusion by any means whatever” {Article 10bis (3) (1)} and, further, being “liable to mislead the public” {Article 10bis (3) (3)}. The treatment of confusingly similar is also contained in European Union law (currently covering twenty-seven countries) and is structured as follows. “...because of its identity with or similarity to...there exists a likelihood of confusion on the part of the public...; the likelihood of confusion includes the likelihood of association...” {Article 4 (1) (b) of the 1988 EU Trade Mark directive 89/104/EEC}. Article 8 (1) (b) of the 1993 European Union Trade Mark regulation 40/94 is also relevant.

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intended to be registered, or so closely resembling such trademark to the extent that it may lead to deceiving third parties.

12- The trademark which is identical or similar to, or constitutes a translation of, a well-known trademark for use on similar or identical goods to those for which that one is well-known for and whose use would cause confusion with the well-known mark, or for use of different goods in such a way as to prejudice the interests of the owner of the well-known mark and leads to believing that there is a connection between its owner and those goods as well as the marks which are similar or identical to the honorary badges, flags, and other insignia as well as the names and abbreviations relating to international or regional organizations or those that offend our Arab and Islamic age-old values.

In Oman for example, Article 2 of the Sultan Decree No. 38/2000 states:

“The following shall not be considered as trademarks and shall not be registered as such: □If the mark is identical, similar to a degree which causes confusion, or a translation of a trademark or a commercial name known in the Sultanate of Oman with respect to identical or similar goods or services belonging to another business, or if it is known and registered in the Sultanate of Oman on goods and service which are neither identical nor similar to those for which the mark is sought to be registered provided that the usage of the mark on those goods or services in this last case will suggest a connection between those goods or services and the owner of the known trademark and such use will cause damage to the interests of the owner of the known trademark.”

Although the laws In Egypt do not have specific provisions regarding confusion they stress in great detail the importance of distinctiveness of a trade mark.

Article 63 in the IP Law of Egypt No.82 for the year 2002 states:

“A trademark is any sign distinguishing goods, whether products or services, and include is particular names represented in a distinctive manner, signatures, words, letters, numerals, design, symbols, signposts, stamps, seal, drawings, engravings, a combination of distinctly formed colors and any other combination of these elements if used, or meant to be used, to distinguish the precedents of a particular industry, agriculture, forest or mining venture or any goods, or to indicate the origin of products or goods or their quality, category, guarantee, preparation process, or to indicate the provision of any service. In all cases, a trademark shall be a sign that is recognizable by sight.”

48 Found at [http://www.wipo.int/treaties/en/ip/paris/trtdocs\\_wo020.ht](http://www.wipo.int/treaties/en/ip/paris/trtdocs_wo020.ht) with 171 contracting parties.

- viii) In the United States, existing trade mark law requires applicants for trademark registration to state under penalty of perjury that "...to the best of the verifier's knowledge and belief, no other person has the right to use such mark in commerce either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods of such other person, to cause confusion, or to cause mistake, or to deceive..." which is contained in Section 1051 (3) (d) of the US Trademark Act 2005 (found at <http://www.bitlaw.com/source/15usc/1051.html>.)<sup>49</sup>
- ix) In Australia, the Australian Trade Marks Act 1995 Section 10 says that "...For the purposes of this Act, a trade mark is taken to be deceptively similar to another trade mark if it so nearly resembles that other trade mark that it is likely to deceive or cause confusion" (found at [http://www.ipaustralia.gov.au/resources/legislation\\_index.shtml](http://www.ipaustralia.gov.au/resources/legislation_index.shtml))
- x) A number of different trademark offices provide guidance on how to interpret confusion. For example, the European Union Trade Mark Office provides guidance on how to interpret confusion. *"...confusion may be visual, phonetic or conceptual. A mere aural similarity may create a likelihood of confusion. A mere visual similarity may create a likelihood of confusion. Confusion is based on the fact that the relevant public does not tend to analyse a word in detail but pays more attention to the distinctive and dominant components. Similarities are more significant than dissimilarities. The visual comparison is based on an analysis of the number and sequence of the letters, the number of words and the structure of the signs. Further particularities may be of relevance, such as the existence of special letters or accents that may be perceived as an indication of a specific language. For words, the visual comparison coincides with the phonetic comparison unless in the relevant language the word is not pronounced as it is written. It should*

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<sup>49</sup> Further information can be found at the US Patent and Trademark Office's website <http://www.uspto.gov/>

*be assumed that the relevant public is either unfamiliar with that foreign language, or even if it understands the meaning in that foreign language, will still tend to pronounce it in accordance with the phonetic rules of their native language. The length of a name may influence the effect of differences. The shorter a name, the more easily the public is able to perceive all its single elements. Thus, small differences may frequently lead in short words to a different overall impression. In contrast, the public is less aware of differences between long names. The overall phonetic impression is particularly influenced by the number and sequence of syllables.”* (found at <http://oami.europa.eu/en/mark/marque/direc.htm>).

- xi) An extract from the United Kingdom’s Trade Mark Office’s Examiner’s Guidance Manual is useful in explaining further the Committee’s approach to developing its Recommendation. *“For likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the average consumer. Likelihood of association is not an alternative to likelihood of confusion, “but serves to define its scope”. Mere association, in the sense that the later mark brings the earlier mark to mind is insufficient to find a likelihood of confusion, unless the average consumer, in bringing the earlier mark to mind, is led to expect the goods or services of both marks to be under the control of one single trade source. “The risk that the public might believe that the goods/services in question come from the same undertaking or, as the case may be, from economically-linked undertakings, constitutes a likelihood of confusion...”* (found at <http://www.patent.gov.uk/tm/t-decisionmaking/t-law/t-law-manual.htm>)
- xii) The Committee also looked in detail at the existing provisions of ICANN’s Registrar Accreditation Agreement, particularly Section 3.7.7.9<sup>50</sup> which says that “...The Registered Name Holder shall

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<sup>50</sup> Found at <http://www.icann.org/registrars/ra-agreement-17may01.htm#3>

represent that, to the best of the Registered Name Holder's knowledge and belief, neither the registration of the Registered Name nor the manner in which it is directly or indirectly used infringes the legal rights of any third party.”

- xiii) The implications of the introduction of Internationalised Domain Names (IDNs) are, in the main, the same as for ASCII top-level domains. On 22 March 2007 the IDN-WG released its *Outcomes Report*<sup>51</sup> that the Working Group presented to the GNSO Committee. The Working Group's exploration of IDN-specific issues confirmed that the new TLD recommendations are valid for IDN TLDs. The full IDN WG Report is found in Part B of the *Report*.
- xiv) The technical testing for IDNs at the top-level is not yet completed although strong progress is being made. Given this and the other work that is taking place around the introduction of IDNs at the top-level, there are some critical factors that may impede the immediate acceptance of new IDN TLD applications. The conditions under which those applications would be assessed would remain the same as for ASCII TLDs.
- xv) Detailed work continues on the preparation of an Implementation Plan that reflects both the Principles and the Recommendations. The proposed Implementation Plan deals with a comprehensive range of potentially controversial (for whatever reason) string applications which balances the need for reasonable protection of existing legal rights and the capacity to innovate with new uses for top level domains that may be attractive to a wide range of users<sup>52</sup>.
- xvi) The draft Implementation Plan (included in the *Discussion Points* document), illustrates the flow of the application and evaluation process

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<sup>51</sup> Found at <http://gnso.icann.org/drafts/idn-wg-fr-22mar07.htm>.

<sup>52</sup> The 2003 correspondence between ICANN's then General Counsel and the then GAC Chairman is also useful <http://www.icann.org/correspondence/touton-letter-to-tarmizi-10feb03.htm>.

and includes a detailed dispute resolution and extended evaluation tracks designed to resolve objections to applicants or applications.

- xvii) There is tension between those on the Committee who are concerned about the protection of existing TLD strings and those concerned with the protection of trademark and other rights as compared to those who wish, as far as possible, to preserve freedom of expression and creativity. The *Implementation Plan* sets out a series of tests to apply the recommendation during the application evaluation process.

**2. Recommendation 3 Discussion -- Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law. Examples of these legal rights that are internationally recognized include, but are not limited to, rights defined in the Paris Convention for the Protection of Industry Property (in particular trademark rights), the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) (in particular freedom of expression rights).**

- i. This recommendation has support from all GNSO Constituencies. Ms Doria supported the recommendation with concern expressed below<sup>53</sup>.
- ii. This recommendation was discussed in detail in the lead up to the Committee's 7 June 2007 conference call and it was agreed that further work would be beneficial. That work was conducted through a series of teleconferences and email exchanges. The Committee decided to leave the recommendation text as it had been drafted and insert a new Principle G that reads "...The string evaluation process must not

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<sup>53</sup> "My first concern relates to the protection of what can be called the linguistic commons. While it is true that much of trademark law and practice does protect general vocabulary and common usage from trademark protection, I am not sure that this is always the case in practice. I am also not convinced that trademark law and policy that applies to specific product type within a specific locale is entirely compatible with a general and global naming system."

infringe the applicant's freedom of expression rights that are protected under internationally recognized principles of law."

- iii. Prior to this, the Committee engaged in comprehensive discussion about this recommendation and took advice from a number of experts within the group<sup>54</sup>. The original text of the recommendation has been modified to recognise that an applicant would be bound by the laws of the country where they are located and an applicant may be bound by another country that has jurisdiction over them. In addition, the original formulation that included "freedom of speech" was modified to read the more generally applicable "freedom of expression".
- iv. Before reaching agreement on the final text, the IPC and the NCUC, in their respective Constituency Impact Statements (CIS), had differing views. The NCUC argued that "...there is no recognition that trade marks (and other legal rights have legal limits and *defenses*." The IPC says "agreed [to the recommendation], and, as stated before, appropriate mechanisms must be in place to address conflicts that may arise between any proposed new string and the IP rights of others."

### **3. Recommendation 4 Discussion -- Strings must not cause any technical instability.**

- i. This recommendation is supported by all GNSO Constituencies and Ms Doria.
- ii. It was agreed by the Committee that the string should not cause any technical issues that threatened the stability and security of the Internet.
- iii. In its CIS, the ISPCP stated that "...this is especially important in the avoidance of any negative impact on network activities...The ISPCP considers recommendations 7 and 8 to be fundamental. The technical, financial, organizational and operational capability of the applicant are the evaluators' instruments for preventing potential negative impact on

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<sup>54</sup> For example, David Maher, Jon Bing, Steve Metalitz, Philip Sheppard and Michael Palage.

a new string on the activities of our sector (and indeed of many other sectors).” The IPC also agreed that “technical and operational stability are imperative to any new gTLD introduction.” The RC said “...This is important to Registrars in that unstable registry and/or zone operations would have a serious and costly impact on its operations and customer service and support.”

- iv. The Security and Stability Advisory Committee (SSAC) has been involved in general discussions about new top level domains and will be consulted formally to confirm that the implementation of the recommendations will not cause any technical instability.
- v. A reserved word list, which includes strings which are reserved for technical reasons, has been recommended by the RN-WG. This table is found in the section below.

#### 4. Recommendation 5 Discussion -- Strings must not be a Reserved Word.<sup>55</sup>

- i. This recommendation is supported by all GNSO Constituencies. Ms Doria supported the recommendation but expressed some concerns outlined in the footnote below.<sup>56</sup>
- ii. The RN WG developed a definition of “reserved word” in the context of new TLDs which said “...depending on the specific reserved name category as well as the type (ASCII or IDN), the reserved name requirements recommended may apply in any one or more of the following levels as indicated:
  1. At the top level regarding gTLD string restrictions

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<sup>55</sup> Reserved Word has a specific meaning in the ICANN context and includes, for example, the reserved word provisions in ICANN’s existing registry contracts. See <http://www.icann.org/registries/agreements.htm>.

<sup>56</sup> “Until such time as the technical work on IDNAbis is completed, I am concerned about establishing reserved name rules connected to IDNs. My primary concern involves policy decisions made in ICANN for reserved names becoming hard coded in the IDNAbis technical solution and thus becoming technical constraints that are no longer open to future policy reconsideration.”

2. At the second-level as contractual conditions
  3. At the third-level as contractual conditions for any new gTLDs that offer domain name registrations at the third-level.
- iii. The notion of “reserved words” has a specific meaning within the ICANN context. Each of the existing ICANN registry contracts has provisions within it that govern the use of reserved words. Some of these recommendations will become part of the contractual conditions for new registry operators.
  - iv. The Reserved Names Working Group (RN-WG) developed a series of recommendations across a broad spectrum of reserved words. The Working Group’s *Final Report*<sup>57</sup> was reviewed and the recommendations updated by the Committee at ICANN’s Puerto Rico meeting and, with respect to the recommendations relating to IDNs, with IDN experts. The final recommendations are included in the following table.

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<sup>57</sup> Found online at <http://gnso.icann.org/issues/new-gtlds/final-report-rn-wg-23may07.htm> and in full in Part B of the *Report*.

	<b>Reserved Name Category</b>	<b>Domain Name Level(s)</b>	<b>Recommendation</b>
1	ICANN & IANA	All ASCII	The names listed as ICANN and IANA names will be reserved at all levels.
2	ICANN & IANA	Top level, IDN	Any names that appear in the IDN evaluation facility <sup>58</sup> which consist exclusively of translations of 'example' or 'test' that appear in the document at <a href="http://www.icann.org/topics/idn/idn-evaluation-plan-v2%209.pdf">http://www.icann.org/topics/idn/idn-evaluation-plan-v2%209.pdf</a> shall be reserved.
3	ICANN & IANA	2 <sup>nd</sup> & 3 <sup>rd</sup> levels, IDN	Any names that appear in the IDN evaluation facility which consist exclusively of translations of 'example' or 'test' that appear in the document at <a href="http://www.icann.org/topics/idn/idn-evaluation-plan-v2%209.pdf">http://www.icann.org/topics/idn/idn-evaluation-plan-v2%209.pdf</a> shall be reserved.
4	Symbols	All	We recommend that the current practice be maintained, so that no symbols other than the '-' [hyphen] be considered for use, with further allowance for any equivalent marks that may explicitly be made available in future revisions of the IDNA protocol.
5	Single and Two Character IDNs	IDNA-valid strings at all levels	Single and two-character U-labels on the top level and second level of a domain name should not be restricted in general. At the top level, requested strings should be analyzed on a case-by-case basis in the new gTLD process depending on the script and language used in order to determine whether the string should be granted for allocation in the DNS with particular caution applied to U-labels in Latin script (see Recommendation 10 below). Single and two character labels at the second level and the third level if applicable should be available for registration, provided they are consistent with the IDN Guidelines.
6	Single Letters	Top Level	We recommend reservation of single letters at the top level based on technical questions raised. If sufficient research at a later date demonstrates that the technical issues and concerns are addressed, the topic of releasing reservation status can be reconsidered.
7	Single Letters and Digits	2 <sup>nd</sup> Level	In future gTLDs we recommend that single letters and single digits be available at the second (and third level if applicable).

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<sup>58</sup> The Committee are aware that the terminology used here for the purposes of policy recommendations requires further refinement and may be at odds with similar terminology developed in other context. The terminology may be imprecise in other contexts than the general discussion about reserved words found here.

	<b>Reserved Name Category</b>	<b>Domain Name Level(s)</b>	<b>Recommendation</b>
8	Single and Two Digits	Top Level	A top-level label must not be a plausible component of an IPv4 or IPv6 address. (e.g., .3, .99, .123, .1035, .0xAF, .1578234)
9	Single Letter, Single Digit Combinations	Top Level	Applications may be considered for single letter, single digit combinations at the top level in accordance with the terms set forth in the new gTLD process.  Examples include .3F, .A1, .u7.
10	Two Letters	Top Level	We recommend that the current practice of allowing two letter names at the top level, only for ccTLDs, remains at this time. <sup>59</sup>
11	Any combination of Two Letters, Digits	2 <sup>nd</sup> Level	Examples include .AU, .DE, .UK. Registries may propose release provided that measures to avoid confusion with any corresponding country codes are implemented. <sup>60</sup> Examples include ba.aero, ub.cat, 53.com, 3M.com, e8.org.
12	Tagged Names	Top Level ASCII	In the absence of standardization activity and appropriate IANA registration, all labels with hyphens in both the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n") must be reserved at the top-level. <sup>61</sup>

<sup>59</sup> The subgroup was encouraged by the ccNSO not to consider removing the restriction on two-letter names at the top level. IANA has based its allocation of two-letter names at the top level on the ISO 3166 list. There is a risk of collisions between any interim allocations, and ISO 3166 assignments which may be desired in the future.

<sup>60</sup> The existing gTLD registry agreements provide for a method of potential release of two-character LDH names at the second level. In addition, two character LDH strings at the second level may be released through the process for new registry services, which process involves analysis of any technical or security concerns and provides opportunity for public input. Technical issues related to the release of two-letter and/or number strings have been addressed by the RSTEP Report on GNR's proposed registry service. The GAC has previously noted the WIPO II Report statement that "If ISO 3166 alpha-2 country code elements are to be registered as domain names in the gTLDs, it is recommended that this be done in a manner that minimises the potential for confusion with the ccTLDs."

<sup>61</sup> Considering that the current requirement in all 16 registry agreement reserves "All labels with hyphens in the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n")", this requirement reserves any names having any of a combination of 1296 different prefixes (36x36).

	Reserved Name Category	Domain Name Level(s)	Recommendation
13	N/A	Top Level IDN	<p>For each IDN gTLD proposed, applicant must provide both the "ASCII compatible encoding" ("A-label") and the "Unicode display form" ("U-label")<sup>62</sup> For example:</p> <ul style="list-style-type: none"> <li>• If the Chinese word for 'Beijing' is proposed as a new gTLD, the applicant would be required to provide the A-label (xn--1lq90i) and the U-label (北京).</li> <li>• If the Japanese word for 'Tokyo' is proposed as a new gTLD, the applicant would be required to provide the A-label (xn--1qs71d) and the U-label (東京).</li> </ul>
14	Tagged Names	2 <sup>nd</sup> Level ASCII	<p>The current reservation requirement be reworded to say, "<i>In the absence of standardization activity and appropriate IANA registration, all labels with hyphens in both the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n") must be reserved in ASCII at the second (2<sup>nd</sup>) level.</i>"<sup>63</sup> – added words in <i>italics</i>. (Note that names starting with "xn--" may only be used if the current ICANN IDN Guidelines are followed by a gTLD registry.)</p>
15	Tagged Names	3 <sup>rd</sup> Level ASCII	<p>All labels with hyphens in both the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n") must be reserved in ASCII at the third (3<sup>rd</sup> level) for gTLD registries that register names at the third level."<sup>64</sup> – added words in <i>italics</i>. (Note that names starting with "xn--" may only be used if the current ICANN IDN Guidelines are followed by a gTLD registry.)</p>
16	NIC, WHOIS, WWW	Top ASCII	<p>The following names must be reserved: nic, whois, www.</p>
17	NIC, WHOIS, WWW	Top IDN	<p>Do not try to translate nic, whois and www into Unicode versions for various scripts or to reserve any ACE versions of such translations or transliterations if they exist.</p>

<sup>62</sup> Internet Draft IDNabis Issues: <http://www.ietf.org/internet-drafts/draft-klensin-idnabis-issues-01.txt> (J. Klensin), Section 3.1.1.1

<sup>63</sup> Considering that the current requirement in all 16 registry agreement reserves "All labels with hyphens in the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n")", this requirement reserves any names having any of a combination of 1296 different prefixes (36x36).

<sup>64</sup> Considering that the current requirement in all 16 registry agreement reserves "All labels with hyphens in the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n")", this requirement reserves any names having any of a combination of 1296 different prefixes (36x36).

	<b>Reserved Name Category</b>	<b>Domain Name Level(s)</b>	<b>Recommendation</b>
18	NIC, WHOIS, WWW	Second and Third* ASCII	The following names must be reserved for use in connection with the operation of the registry for the Registry TLD: nic, whois, www Registry Operator may use them, but upon conclusion of Registry Operator's designation as operator of the registry for the Registry TLD, they shall be transferred as specified by ICANN. (*Third level only applies in cases where a registry offers registrations at the third level.)
19	NIC, WHOIS, WWW	Second and Third* IDN	Do not try to translate nic, whois and www into Unicode versions for various scripts or to reserve any ACE versions of such translations or transliterations if they exist, except on a case by case basis as proposed by given registries. (*Third level only applies in cases where a registry offers registrations at the third level.)
20	Geographic and geopolitical	Top Level ASCII and IDN	There should be no geographical reserved names (i.e., no exclusionary list, no presumptive right of registration, no separate administrative procedure, etc.). The proposed challenge mechanisms currently being proposed in the draft new gTLD process would allow national or local governments to initiate a challenge, therefore no additional protection mechanisms are needed. Potential applicants for a new TLD need to represent that the use of the proposed string is not in violation of the national laws in which the applicant is incorporated.

However, new TLD applicants interested in applying for a TLD that incorporates a country, territory, or place name should be advised of the GAC Principles, and the advisory role vested to it under the ICANN Bylaws. Additionally, a summary overview of the obstacles encountered by previous applicants involving similar TLDs should be provided to allow an applicant to make an informed decision. Potential applicants should also be advised that the failure of the GAC, or an individual GAC member, to file a challenge during the TLD application process, does not constitute a waiver of the authority vested to the GAC under the ICANN Bylaws.

*Note New gTLD Recommendation 20*

	<b>Reserved Name Category</b>	<b>Domain Name Level(s)</b>	<b>Recommendation</b>
21	Geographic and geopolitical	All Levels ASCII and IDN	The term 'geopolitical names' should be avoided until such time that a useful definition can be adopted. The basis for this recommendation is founded on the potential ambiguity regarding the definition of the term, and the lack of any specific definition of it in the WIPO Second Report on Domain Names or GAC recommendations.

*Note New gTLD Recommendation 20*

22	Geographic and geopolitical	Second Level & Third Level if applicable, ASCII & IDN	The consensus view of the working group is given the lack of any established international law on the subject, conflicting legal opinions, and conflicting recommendations emerging from various governmental fora, the current geographical reservation provision contained in the sTLD contracts during the 2004 Round should be removed, and harmonized with the more recently executed .COM, .NET, .ORG, .BIZ and .INFO registry contracts. The only exception to this consensus recommendation is those registries incorporated/organized under countries that require additional protection for geographical identifiers. In this instance, the registry would have to incorporate appropriate mechanisms to comply with their national/local laws.
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For those registries incorporated/organized under the laws of those countries that have expressly supported the guidelines of the WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications as adopted by the WIPO General Assembly, it is strongly recommended (but not mandated) that these registries take appropriate action to promptly implement protections that are in line with these WIPO guidelines and are in accordance with the relevant national laws of the applicable Member State.

*Note New gTLD Recommendation 20*

	<b>Reserved Name Category</b>	<b>Domain Name Level(s)</b>	<b>Recommendation</b>
23	gTLD Reserved Names	Second & Third Level ASCII and IDN (when applicable)	Absent justification for user confusion <sup>65</sup> , the recommendation is that gTLD strings should no longer be reserved from registration for new gTLDs at the second or when applicable at the third level. Applicants for new gTLDs should take into consideration possible abusive or confusing uses of existing gTLD strings at the second level of their corresponding gTLD, based on the nature of their gTLD, when developing the startup process for their gTLD.
24	Controversial Names	All Levels, ASCII & IDN	There should not be a new reserved names category for Controversial Names.
25	Controversial Names	Top Level, ASCII & IDN	There should be a list of disputed names created as a result of the dispute process to be created by the new gTLD process. <i>Note New gTLD Recommendation 6</i>
26	Controversial Names	Top Level, ASCII & IDN	In the event of the initiation of a CN-DRP process, applications for that label will be placed in a HOLD status that would allow for the dispute to be further examined. If the dispute is dismissed or otherwise resolved favorably, the applications will reenter the processing queue. The period of time allowed for dispute should be finite and should be relegated to the CN-DRP process. The external dispute process should be defined to be objective, neutral, and transparent. The outcome of any dispute shall not result in the development of new categories of Reserved Names. <sup>66</sup> <i>Note New gTLD Recommendation 6</i>
27	Controversial Names	Top Level, ASCII & IDN	The new GTLD Controversial Names Dispute Resolution Panel should be established as a standing mechanism that is convened at the time a dispute is initiated. Preliminary elements of that process are provided in this report but further work is needed in this area. <i>Note New gTLD Recommendation 6</i>

<sup>65</sup> With its recommendation, the sub-group takes into consideration that justification for potential user confusion (i.e., the minority view) as a result of removing the contractual condition to reserve gTLD strings for new TLDs may surface during one or more public comment periods.

<sup>66</sup> Note that this recommendation is a continuation of the recommendation in the original RN-WG report, modified to synchronize with the additional work done in the 30-day extension period.

	<b>Reserved Name Category</b>	<b>Domain Name Level(s)</b>	<b>Recommendation</b>
28	Controversial Names	Top Level, ASCII & IDN	<p>Within the dispute process, disputes would be initiated by the ICANN Advisory Committees (e.g, ALAC or GAC) or supporting organizations (e.g, GNSO or ccNSO). As these organizations do not currently have formal processes for receiving, and deciding on such activities, these processes would need to be defined:</p> <ul style="list-style-type: none"> <li>○ The Advisory Groups and the Supporting Organizations, using their own processes and consistent with their organizational structure, will need to define procedures for deciding on any requests for dispute initiation.</li> <li>○ Any consensus or other formally supported position from an ICANN Advisory Committee or ICANN Supporting Organization must document the position of each member within that committee or organization (i.e., support, opposition, abstention) in compliance with both the spirit and letter of the ICANN bylaws regarding openness and transparency.</li> </ul> <p><i>Note New gTLD Recommendation 6</i></p>
29	Controversial Names	Top Level, ASCII & IDN	<p>Further work is needed to develop predictable and transparent criteria that can be used by the Controversial Resolution Panel. These criteria must take into account the need to:</p> <ul style="list-style-type: none"> <li>▪ Protect freedom of expression</li> <li>▪ Affirm the fundamental human rights, in the dignity and worth of the human person and the equal rights of men and women</li> <li>▪ Take into account sensitivities regarding terms with cultural and religious significance.</li> </ul> <p><i>Note New gTLD Recommendation 6</i></p>
30	Controversial Names	Top Level, ASCII & IDN	<p>In any dispute resolution process, or sequence of issue resolution processes, the Controversial name category should be the last category considered.</p> <p><i>Note New gTLD Recommendation 6</i></p>

- v. With respect to geographic terms, the NCUC's CIS stated that "...We oppose any attempts to create lists of reserved names. Even examples are to be avoided as they can only become prescriptive. We are

concerned that geographic names should not be fenced off from the commons of language and rather should be free for the use of all...Moreover, the proposed recommendation does not make allowance for the duplication of geographic names outside the ccTLDs – where the real issues arise and the means of resolving competing use and fair and nominative use.”

- vi. The GAC’s Public Policy Principle 2.2 states that “ICANN should avoid country, territory or place names, and country, territory or regional language or people descriptions, unless in agreement with the relevant government or public authorities.”
- vii. The Implementation Team has developed some suggestions about how this recommendation may be implemented. Those suggestions and the process flow were incorporated into the Version 2 of the ICANN Staff *Discussion Points* document for consideration by the Committee.

**5. Recommendation 6 Discussion -- Strings must not be contrary to generally accepted legal norms relating to morality and public order that are recognized under international principles of law.**

**Examples of such principles of law include, but are not limited to, the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the International Convention of the Elimination of All Forms of Racial Discrimination, intellectual property treaties administered by the World Intellectual Property Organisation (WIPO) and the WTO Agreement on Trade-Related Aspects of Intellectual Property (TRIPS).**

- i. This Recommendation is supported by all GNSO Constituencies except the NCUC. The NCUC has submitted a Minority Statement which is found in full in Annex A. The NCUC’s earlier Constituency Impact Statement is found, along with all the GNSO Constituency Impact Statements, in Part B of this report. Ms Doria has submitted individual

comments<sup>67</sup>. The Committee has discussed this recommendation in great detail and has attempted to address the experiences of the 2003-2004 sTLD round and the complex issues surrounding the .xxx application. The Committee has also recognised the GAC's Public Policy Principles, most notably Principle 2.1 a) and b) which refer to both freedom of expression and terms with significance in a variety of contexts. In addition, the Committee recognises the tension respecting freedom of expression and being sensitive to the legitimate concerns others have about offensive terms. The NCUC's earlier CIS says "...we oppose any string criteria based on morality and public order".

- ii. Other Constituencies did not address this recommendation in their CISs. The Implementation Team has tried to balance these views by establishing an Implementation Plan that recognises the practical effect of opening a new top-level domain application system that will attract applications that some members of the community do not agree with. Whilst ICANN does have a technical co-ordination remit, it must also put in place a system of handling objections to strings or to applicants, using pre-published criteria, that is fair and predictable for applicants. It is also necessary to develop guidance for independent evaluators tasked with making decisions about objections.

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<sup>67</sup> Ms Doria said "...My primary concern focuses on the term 'morality'. While public order is frequently codified in national laws and occasionally in international law and conventions, the definition of what constitutes morality is not generally codified, and when it is, I believe it could be referenced as public order. This concern is related to the broad set of definitions used in the world to define morality. By including morality in the list of allowable exclusions we have made the possible exclusion list indefinitely large and have subjected the process to the consideration of all possible religious and ethical systems. ICANN or the panel of reviewers will also have to decide between different sets of moral principles, e.g, a morality that holds that people should be free to express themselves in all forms of media and those who believe that people should be free from exposure to any expression that is prohibited by their faith or moral principles. This recommendation will also subject the process to the fashion and occasional demagoguery of political correctness. I do not understand how ICANN or any expert panel will be able to judge that something should be excluded based on reasons of morality without defining, at least de-facto, an ICANN definition of morality? And while I am not a strict constructionist and sometimes allow for the broader interpretation of ICANN's mission, I do not believe it includes the definition of a system of morality."

- iii. In its consideration of public policy aspects of new top-level domains the Committee examined the approach taken in a wide variety of jurisdictions to issues of morality and public order. This was done not to make decisions about acceptable strings but to provide a series of potential tests for independent evaluators to use should an objection be raised to an application. The use of the phrase “morality and public order” within the recommendation was done to set some guidelines for potential applicants about areas that may raise objections. The phrasing was also intended to set parameters for potential objectors so that any objection to an application could be analysed within the framework of broadly accepted legal norms that independent evaluators could use across a broad spectrum of possible objections. The Committee also sought to ensure that the objections process would have parameters set for who could object. Those suggested parameters are found within the Implementation Guidelines.
- iv. In reaching its decision about the recommendation, the Committee sought to be consistent with, for example, Article 3 (1) (f) of the 1988 European Union Trade Mark Directive 89/104/EEC and within Article 7 (1) (f) of the 1993 European Union Trade Mark Regulation 40/94. In addition, the phrasing “contrary to morality or public order and in particular of such a nature as to deceive the public” comes from Article 6quinques (B)(3) of the 1883 *Paris Convention*. The reference to the *Paris Convention* remains relevant to domain names even though, when it was drafted, domain names were completely unheard of.
- v. The concept of “morality” is captured in Article 19 United Nations Convention on Human Rights (<http://www.unhchr.ch/udhr/lang/eng.htm>) says “...Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” Article 29 continues by saying that “...In the

exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society”.

- vi. The EU Trade Mark Office’s Examiner’s guidelines provides assistance on how to interpret morality and deceit. “...Contrary to morality or public order. Words or images which are offensive, such as swear words or racially derogatory images, or which are blasphemous are not acceptable. There is a dividing line between this and words which might be considered in poor taste. The latter do not offend against this provision.” The further element is deception of the public which is treated in the following way. “...Deceive the public. To deceive the public, is for instance as to the nature, quality or geographical origin. For example, a word may give rise to a real expectation of a particular locality which is untrue.” For more information, see Sections 8.7 and 8.8 at <http://oami.europa.eu/en/mark/marque/direc.htm>
- vii. The UK Trade Mark office provides similar guidance in its Examiner’s Guidance Manual. “Marks which offend fall broadly into three types: those with criminal connotations, those with religious connotations and explicit/taboo signs. Marks offending public policy are likely to offend accepted principles of morality, e.g. illegal drug terminology, although the question of public policy may not arise against marks offending accepted principles of morality, for example, taboo swear words. If a mark is merely distasteful, an objection is unlikely to be justified, whereas if it would cause outrage or would be likely significantly to undermine religious, family or social values, then an objection will be appropriate. Offence may be caused on matters of race, sex, religious belief or general matters of taste and decency. Care should be taken when words have a religious significance and which may provoke

greater offence than mere distaste, or even outrage, if used to parody a religion or its values. Where a sign has a very sacred status to members of a religion, mere use may be enough to cause outrage.”

For more information, see <http://www.patent.gov.uk/tm/t-decisionmaking/t-law/t-law-manual.htm>)

- viii. This recommendation has been the subject of detailed Committee and small group work in an attempt to reach consensus about both the text of the recommendation and the examples included as guidance about generally accepted legal norms. The work has been informed by detailed discussion within the GAC and through interactions between the GNSO Committee and the GAC.

**6. Recommendation 7 Discussion -- Applicants must be able to demonstrate their technical capability to run a registry operation for the purpose that the applicant sets out.**

- i. This recommendation is supported by all GNSO Constituencies and Ms Doria.
- ii. The Committee agreed that the technical requirements for applicants would include compliance with a minimum set of technical standards and that this requirement would be part of the new registry operator's contractual conditions included in the proposed base contract. The more detailed discussion about technical requirements has been moved to the contractual conditions section.
- iii. Reference was made to numerous Requests for Comment (RFCs) and other technical standards which apply to existing registry operators. For example, Appendix 7 of the June 2005 .net agreement<sup>68</sup> provides a comprehensive listing of technical requirements in addition to other technical specifications in other parts of the agreement. These requirements are consistent with that which is expected of all current

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<sup>68</sup> <http://www.icann.org/tlds/agreements/net/appendix7.html>

registry operators. These standards would form the basis of any new top-level domain operator requirements.

- iv. This recommendation is referred to in two CISs. “The ISPCP considers recommendations 7 and 8 to be fundamental. The technical, financial, organisational and operational capabilities of the applicant are the evaluators’ instruments for preventing potential negative impact on a new string on the activities of our sector (and indeed of many other sectors).” The NCUC submitted “...we record that this must be limited to transparent, predictable and minimum technical requirements only. These must be published. They must then be adhered to neutrally, fairly and without discrimination.”
- v. The GAC supported this direction in its Public Policy Principles 2.6, 2.10 and 2.11.

**7. Recommendation 8 Discussion -- Applicants must be able to demonstrate their financial and organisational operational capability.**

- i. This recommendation is supported by all GNSO Constituencies and accepted with concern by Ms Doria<sup>69</sup>.
- ii. The Committee discussed this requirement in detail and determined that it was reasonable to request this information from potential applicants. It was also consistent with past practices including the prior new TLD rounds in 2000 and 2003-2004; the .net and .org rebids and the conditions associated with ICANN registrar accreditation.
- iii. This is also consistent with best practice procurement guidelines recommended by the World Bank ([www.worldbank.org](http://www.worldbank.org)), the OECD

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<sup>69</sup> While I accept that a prospective registry must show adequate operational capability, creating a financial criteria is of concern. There may be many different ways of satisfying the requirement for operational capability and stability that may not be demonstrable in a financial statement or traditional business plan. E.g., in the case of an less developed community, the registry may rely on volunteer effort from knowledgeable technical experts.

Another concern I have with financial requirements and high application fees is that they may act to discourage applications from developing nations or indigenous and minority peoples that have a different set of financial opportunities or capabilities than those recognized as acceptable within an expensive and highly developed region such as Los Angeles or Brussels.”

([www.oecd.org](http://www.oecd.org)) and the Asian Development Bank ([www.adb.org](http://www.adb.org)) as well as a range of federal procurement agencies such as the UK telecommunications regulator, Ofcom; the US Federal Communications Commission and major public companies.

- iv. The challenging aspect of this recommendation is to develop robust and objective criteria against which applicants can be measured, recognising a vast array of business conditions and models. This will be an important element of the ongoing development of the Implementation Plan.
- v. The ISPCP discussed the importance of this recommendation in its CIS, as found in Recommendation 7 above.
- vi. The NCUC's CIS addressed this recommendation by saying "...we support this recommendation to the extent that the criteria is truly limited to minimum financial and organizational operational capability...All criteria must be transparent, predictable and minimum. They must be published. They must then be adhered to neutrally, fairly and without discrimination."
- vii. The GAC echoed these views in its Public Policy Principle 2.5 that said "...the evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination. All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process."

**8. Recommendation 9 Discussion -- There must be a clear and pre-published process using objective and measurable criteria.**

- i. This recommendation is supported by all GNSO Constituencies and by Ms Doria. It is consistent with ICANN's previous TLD rounds in 2000

and 2003-2004 and with its re-bid of both the .net and .org registry contracts.

- ii. It is also consistent with ICANN's Mission and Core Values especially 7, 8 and 9 which address openness in decision-making processes and the timeliness of those processes.
- iii. The Committee decided that the "process" criteria for introducing new top-level domains would follow a pre-published application system including the levying of an application fee to recover the costs of the application process. This is consistent with ICANN's approach to the introduction of new TLDs in the previous 2000 and 2004 round for new top-level domains.
- iv. The RyC reiterated its support for this recommendation in its CIS. It said that "...this Recommendation is of major importance to the RyC because the majority of constituency members incurred unnecessarily high costs in previous rounds of new gTLD introductions as a result of excessively long time periods from application submittal until they were able to start their business. We believe that a significant part of the delays were related to selection criteria and processes that were too subjective and not very measurable. It is critical in our opinion that the process for the introduction of new gTLDs be predictable in terms of evaluation requirements and timeframes so that new applicants can properly scope their costs and develop reliable implementation plans." The NCUC said that "...we strongly support this recommendation and again stress the need for all criteria to be limited to minimum operational, financial, and technical considerations. We all stress the need that all evaluation criteria be objective and measurable."

**9. Recommendation 10 Discussion -- There must be a base contract provided to applicants at the beginning of the process.**

- i. This recommendation is supported by all GNSO Constituencies and by Ms Doria.

- ii. The General Counsel's office has been involved in discussions about the provision of a base contract which would assist applicants both during the application process and in any subsequent contract negotiations.
- iii. A framework for the base contract was developed for discussion at the June 2007 ICANN meeting in Puerto Rico. The base contract will not be completed until the policy recommendations are in place. Completion of the policy recommendations will enable the completion of a draft base contract that would be available to applicants prior to the start of the new gTLD process, that is, prior to the beginning of the four-month window preceding the application submittal period.
- iv. The RyC, in its CIS, said, "...like the comments for Recommendation 9, we believe that this recommendation will facilitate a more cost-effective and timely application process and thereby minimize the negative impacts of a process that is less well-defined and objective. Having a clear understanding of base contractual requirements is essential for a new gTLD applicant in developing a complete business plan."

**10. Recommendation 11 Discussion** -- (This recommendation has been removed and is left intentionally blank. Note Recommendation 20 and its Implementation Guidelines).

**11. Recommendation 12 Discussion -- Dispute resolution and challenge processes must be established prior to the start of the process.**

- i. This recommendation is supported by all GNSO Constituencies and Ms Doria.
- ii. The Committee has provided clear direction on its expectations that all the dispute resolution and challenge processes would be established prior to the opening of the application round. The full system will be published prior to an application round starting. However, the finalisation of this process is contingent upon a completed set of

recommendations being agreed; a public comment period and the final agreement of the ICANN Board.

- iii. The draft Implementation Plan in the Implementation Team *Discussion Points* document sets out the way in which the ICANN Staff proposes that disputes between applicants and challenge processes may be handled. Expert legal and other professional advice from, for example, auctions experts is being sought to augment the Implementation Plan.

## TERM OF REFERENCE THREE -- ALLOCATION METHODS

### 12. Recommendation 13 Discussion -- Applications must initially be assessed in rounds until the scale of demand is clear.

- i. This recommendation is supported by all GNSO Constituencies and Ms Doria.
- ii. This recommendation sets out the principal allocation methods for TLD applications. The narrative here should be read in conjunction with the draft flowcharts and the draft Request for Proposals.
- iii. An application round would be opened on Day 1 and closed on an agreed date in the future with an unspecified number of applications to be processed within that round.
- iv. This recommendation may be amended, after an evaluation period and report that may suggest modifications to this system. The development of objective “success metrics” is a necessary part of the evaluation process that could take place within the new TLDs Project Office.
- v. The ISPCP expressed its support for this recommendation. Its CIS said that “...this is an essential element in the deployment of new gTLDs, as it enables any technical difficulties to be quickly identified and sorted out, working with reduced numbers of new strings at a time, rather than many all at once. Recommendation 18 on the use of IDNs is also important in preventing any negative impact on network operators and ISPs.”

### 13. Recommendation 20 Discussion -- An application will be rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be explicitly or implicitly targeted.

- i. This recommendation is supported by the majority of GNSO Constituencies. Ms Doria supports the recommendation but has

concerns about its implementation<sup>70</sup>. The NCUC has submitted a Minority Statement which is found in full in Annex C about the recommendation and its associated Implementation Guidelines F, H and P.

- ii. This recommendation was developed during the preparations for the Committee's 7 June 2007 conference call and during subsequent Committee deliberations. The intention was to factor into the process the very likely possibility of objections to applications from a wide variety of stakeholders.
- iii. The language used here is relatively broad and the implementation impact of the proposed recommendation is discussed in detail in the Implementation Team's *Discussion Points* document.
- iv. The NCUC's response to this recommendation in its earlier CIS says, in part, "...recommendation 20 swallows up any attempt to narrow the string criteria to technical, operational and financial evaluations. It asks for objections based on entirely subjective and unknowable criteria and for unlimited reasons and by unlimited parties." This view has, in part, been addressed in the Implementation Team's proposed plan but this requires further discussion and agreement by the Committee.

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<sup>70</sup> "In general I support the policy though I do have concerns about the implementation which I discuss below in relation to IG (P)".

## TERM OF REFERENCE FOUR -- CONTRACTUAL CONDITIONS

### 14. Recommendation 14 Discussion -- The initial registry agreement term must be of a commercially reasonable length.

- i. The remainder of the recommendations address Term of Reference Four on policies for contractual conditions and should be read in conjunction with Recommendation 10 on the provision of a base contract prior to the opening of an application round. The recommendation is supported by all GNSO Constituencies and Ms Doria.
- ii. This recommendation is consistent with the existing registry contract provisions found in, for example, the .com and .biz agreements.
- iii. These conditions would form the baseline conditions of term length for new TLD operators. It was determined that a term of ten years would reasonably balance the start up costs of registry operations with reasonable commercial terms.
- iv. The RyC commented on this recommendation in its CIS saying that "...the members of the RyC have learned first hand that operating a registry in a secure and stable manner is a capital intensive venture. Extensive infrastructure is needed both for redundant registration systems and global domain name constellations. Even the most successful registries have taken many years to recoup their initial investment costs. The RyC is convinced that these two recommendations [14 & 15] will make it easier for new applicants to raise the initial capital necessary and to continue to make investments needed to ensure the level of service expected by registrants and users of their TLDs. These two recommendations will have a very positive impact on new

gTLD registries and in turn on the quality of the service they will be able to provide to the Internet community.”

**15. Recommendation 15 -- There must be renewal expectancy.**

- i. This recommendation is consistent with the existing registry contract provisions found in, for example, the .com and .biz agreements and is supported by all Constituencies. Ms Doria supported the recommendation and provided the comments found in the footnote below.<sup>71</sup>
- ii. These conditions would form the baseline conditions of term length for new TLD operators. It was determined that a term of ten years would reasonably balance the start up costs of registry operations with reasonable commercial terms.
- iii. See the CIS comments from the RyC in the previous section.

**16. Recommendation 16 -- Registries must apply existing Consensus Policies<sup>72</sup> and adopt new Consensus Policies as they are approved.**

- i. This recommendation is supported by all GNSO Constituencies and Ms Doria.
- ii. The full set of existing ICANN registry contracts can be found here <http://www.icann.org/registries/agreements.htm> and ICANN's seven current Consensus Policies are found at <http://www.icann.org/general/consensus-policies.htm>.

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<sup>71</sup> “In general I support the idea that a registry that is doing a good job should have the expectancy of renewal. I do, however, believe that a registry, especially a registry with general market dominance, or specific or local market dominance, should be subject to comment from the relevant user public and to evaluation of that public comment before renewal. When performance is satisfactory, there should be an expectation of renewal. When performance is not satisfactory, there should be some procedure for correcting the situation before renewal.”

<sup>72</sup> Consensus Policies has a particular meaning within the ICANN environment. Refer to <http://www.icann.org/general/consensus-policies.htm> for the full list of ICANN's Consensus Policies.

- iii. ICANN develops binding Consensus Policies through its policy development processes, in this case, through the GNSO<sup>73</sup>.

**17. Recommendation 17 -- A clear compliance and sanctions process must be set out in the base contract which could lead to contract termination.**

- i. This recommendation is supported by all GNSO Constituencies and Ms Doria.
- ii. Referring to the recommendations on contractual conditions above, this section sets out the discussion of the policies for contractual conditions for new top-level domain registry operators. The recommendations are consistent with the existing provisions for registry operators which were the subject of detailed community input throughout 2006<sup>74</sup>.
- iii. The Committee developed its recommendations during the Brussels and Amsterdam face-to-face consultations, with assistance from the ICANN General Counsel's office. The General Counsel's office has also provided a draft base contract which will be completed once the policy recommendations are agreed. Reference should also be made to Recommendation 5 on reserved words as some of the findings could be part of the base contract.
- iv. The Committee has focused on the key principles of consistency, openness and transparency. It was also determined that a scalable and predictable process is consistent with industry best practice standards for services procurement. The Committee referred in particular to standards within the broadcasting, telecommunications and Internet services industries to examine how regulatory agencies in those environments conducted, for

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<sup>73</sup> <http://www.icann.org/general/bylaws.htm#AnnexA>

<sup>74</sup> <http://www.icann.org/registries/agreements.htm>

example, spectrum auctions, broadcasting licence distribution and media ownership frameworks.

- v. Since then ICANN has developed and published a new approach to its compliance activities. These are found on ICANN's website at <http://www.icann.org/compliance/> and will be part of the development of base contract materials.
- vi. The Committee found a number of expert reports<sup>75</sup> beneficial. In particular, the World Bank report on mobile licensing conditions provides some guidance on best practice principles for considering broader market investment conditions. "...A major challenge facing regulators in developed and developing countries alike is the need to strike the right balance between ensuring certainty for market players and preserving flexibility of the regulatory process to accommodate the rapidly changing market, technological and policy conditions. As much as possible, policy makers and regulators should strive to promote investors' confidence and give incentives for long-term investment. They can do this by favouring the principle of 'renewal expectancy', but also by promoting regulatory certainty and predictability through a fair, transparent and participatory renewal process. For example, by providing details for license renewal or reissue, clearly establishing what is the discretion offered to the licensing body, or ensuring sufficient lead-times and transitional arrangements in the event of non-renewal or changes in licensing conditions. Public consultation procedures and guaranteeing the right to appeal regulatory decisions maximizes the prospects for a successful renewal process. As technological changes and convergence and technologically neutral approaches gain importance, regulators and policy

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<sup>75</sup> The full list of reports is found in the Reference section at the end of the document.

makers need to be ready to adapt and evolve licensing procedures and practices to the new environment.”

- vii. The Recommendations which the Committee has developed with respect to the introduction of new TLDs are consistent with the World Bank principles.

**18. Recommendation 18 Discussion -- If an applicant offers an IDN service, then ICANN’s IDN guidelines must be followed.**

- i. This recommendation is supported by all GNSO Constituencies and Ms Doria. The introduction of internationalised domain names at the root presents ICANN with a series of implementation challenges. This recommendation would apply to any new gTLD (IDN or ASCII TLD) offering IDN services. The initial technical testing<sup>76</sup> has been completed and a series of live root tests will take place during the remainder of 2007.
- ii. The Committee recognises that there is ongoing work in other parts of the ICANN organisation that needs to be factored into the application process that will apply to IDN applications. The work includes the President’s Committee on IDNs and the GAC and ccNSO joint working group on IDNs.

**19. Recommendation 19 Discussion -- Registries must use only ICANN accredited registrars in registering domain names and may not discriminate among such accredited registrars.**

- i. This recommendation is supported by all GNSO Constituencies and Ms Doria.
- ii. There is a long history associated with the separation of registry and registrar operations for top-level domains. The structural separation of VeriSign’s registry operations from Network Solutions registrar operations explains much of the ongoing policy to require the use of ICANN accredited registrars.

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<sup>76</sup> <http://www.icann.org/announcements/announcement-4-07mar07.htm>

- iii. In order to facilitate the stable and secure operation of the DNS, the Committee agreed that it was prudent to continue the current requirement that registry operators be obliged to use ICANN accredited registrars.
- iv. ICANN's Registrar Accreditation Agreement has been in place since 2001<sup>77</sup>. Detailed information about the accreditation of registrars can be found on the ICANN website<sup>78</sup>. The accreditation process is under active discussion but the critical element of requiring the use of ICANN accredited registrars remains constant.
- v. In its CIS, the RyC noted that "...the RyC has no problem with this recommendation for larger gTLDs; the requirement to use accredited registrars has worked well for them. But it has not always worked as well for very small, specialized gTLDs. The possible impact on the latter is that they can be at the mercy of registrars for whom there is no good business reason to devote resources. In the New gTLD PDP, it was noted that this requirement would be less of a problem if the impacted registry would become a registrar for its own TLD, with appropriate controls in place. The RyC agrees with this line of reasoning but current registry agreements forbid registries from doing this. Dialog with the Registrars Constituency on this topic was initiated and is ongoing, the goal being to mutually agree on terms that could be presented for consideration and might provide a workable solution."

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<sup>77</sup> Found at <http://www.icann.org/registrars/ra-agreement-17may01.htm>

<sup>78</sup> Found at <http://www.icann.org/registrars/accreditation.htm>.

## NEXT STEPS

1. Under the GNSO's Policy Development Process, the production of this *Final Report* completes Stage 9. The next steps are to conduct a twenty-day public comment period running from 10 August to 30 August 2007. The GNSO Council is due to meet on 6 September 2007 to vote on the package of principles, policy recommendations and implementation guidelines.
2. After the GNSO Council have voted the Council Report to the Board is prepared. The GNSO's PDP guidelines stipulate that "the Staff Manager will be present at the final meeting of the Council, and will have five (5) calendar days after the meeting to incorporate the views of the Council into a report to be submitted to the Board (the "Board Report"). The Board Report must contain at least the following:
  - a. A clear statement of any Supermajority Vote recommendation of the Council;
  - b. If a Supermajority Vote was not reached, a clear statement of all positions held by Council members. Each statement should clearly indicate (i) the reasons underlying each position and (ii) the constituency(ies) that held the position;
  - c. An analysis of how the issue would affect each constituency, including any financial impact on the constituency;
  - d. An analysis of the period of time that would likely be necessary to implement the policy;
  - e. The advice of any outside advisors relied upon, which should be accompanied by a detailed statement of the advisor's (i) qualifications and

- relevant experience; and (ii) potential conflicts of interest;
- f. The Final Report submitted to the Council; and
  - g. A copy of the minutes of the Council deliberation on the policy issue, including the all opinions expressed during such deliberation, accompanied by a description of who expressed such opinions.
3. It is expected that, according to the Bylaws, "...The Board will meet to discuss the GNSO Council recommendation as soon as feasible after receipt of the Board Report from the Staff Manager. In the event that the Council reached a Supermajority Vote, the Board shall adopt the policy according to the Council Supermajority Vote recommendation unless by a vote of more than sixty-six (66%) percent of the Board determines that such policy is not in the best interests of the ICANN community or ICANN. In the event that the Board determines not to act in accordance with the Council Supermajority Vote recommendation, the Board shall (i) articulate the reasons for its determination in a report to the Council (the "Board Statement"); and (ii) submit the Board Statement to the Council. The Council shall review the Board Statement for discussion with the Board within twenty (20) calendar days after the Council's receipt of the Board Statement. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board will discuss the Board Statement. At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its recommendation, and communicate that conclusion (the "Supplemental Recommendation") to the Board, including an explanation for its current recommendation. In the event that the Council is able to reach a Supermajority Vote on the Supplemental Recommendation, the Board shall adopt the recommendation unless more than sixty-six (66%) percent of the Board determines that such policy is not in the interests of the ICANN

community or ICANN. In any case in which the Council is not able to reach Supermajority, a majority vote of the Board will be sufficient to act. When a final decision on a GNSO Council Recommendation or Supplemental Recommendation is timely, the Board shall take a preliminary vote and, where practicable, will publish a tentative decision that allows for a ten (10) day period of public comment prior to a final decision by the Board.”

4. The final stage in the PDP is the implementation of the policy which is also governed by the Bylaws as follows, “...Upon a final decision of the Board, the Board shall, as appropriate, give authorization or direction to the ICANN staff to take all necessary steps to implement the policy.”

## Annex A – NCUC Minority Statement: Recommendation 6

### STATEMENT OF DISSENT ON RECOMMENDATION #6 OF GNSO'S NEW GTLD REPORT FROM THE NON-COMMERCIAL USERS CONSTITUENCY (NCUC) 20 July 2007

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NCUC supports most of the recommendations in the GNSO's Final Report, but Recommendation #6 is one we cannot support.<sup>79</sup>

We oppose Recommendation #6 for the following reasons:

- 1) It will completely undermine ICANN's efforts to make the gTLD application process predictable, and instead make the evaluation process arbitrary, subjective and political;
- 2) It will have the effect of suppressing free and diverse expression;
- 3) It exposes ICANN to litigation risks;
- 4) It takes ICANN too far away from its technical coordination mission and into areas of legislating morality and public order.

We also believe that the objective of Recommendation #6 is unclear, in that much of its desirable substance is already covered by Recommendation #3. At a minimum, we believe that the words "relating to morality and public order" must be struck from the recommendation.

#### 1) Predictability, Transparency and Objectivity

Recommendation #6 poses severe implementation problems. It makes it impossible to achieve the GNSO's goals of predictable and transparent evaluation criteria for new gTLDs.

Principle 1 of the New gTLD Report states that the evaluation process must be "predictable," and Recommendation #1 states that the evaluation criteria

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<sup>79</sup> Text of Recommendation #6: "Strings must not be contrary to generally accepted legal norms relating to morality and public order that are enforceable under generally accepted and internationally recognized principles of law. Examples of such principles of law include, but are not limited to, the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) and the International Convention on the Elimination of All Forms of Racial Discrimination, intellectual property treaties administered by the World Intellectual Property Organisation (WIPO) and the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)."

must be transparent, predictable, and fully available to applicants prior to their application.

NCUC strongly supports those guidelines. But no gTLD applicant can possibly know in advance what people or governments in a far away land will object to as “immoral” or contrary to “public order.” When applications are challenged on these grounds, applicants cannot possibly know what decision an expert panel – which will be assembled on an ad hoc basis with no precedent to draw on – will make about it.

Decisions by expert panels on “morality and public order” *must* be subjective and arbitrary, because there is no settled and well-established international law regarding the relationship between TLD strings and morality and public order. There is no single “community standard” of morality that ICANN can apply to all applicants in every corner of the globe. What is considered “immoral” in Teheran may be easily accepted in Los Angeles or Stockholm; what is considered a threat to “public order” in China and Russia may not be in Brazil and Qatar.

## **2) Suppression of expression of controversial views**

gTLD applicants will respond to the uncertainty inherent in a vague “morality and public order” standard and lack of clear standards by suppressing and avoiding any ideas that might generate controversy. Applicants will have to invest sizable sums of money to develop a gTLD application and see it through the ICANN process. Most of them will avoid risking a challenge under Recommendation #6. In other words, the presence of Recommendation #6 will result in self-censorship by most applicants.

That policy would strip citizens everywhere of their rights to express controversial ideas because someone else finds them offensive. This policy recommendation ignores international and national laws, in particular freedom of expression guarantees that permit the expression of “immoral” or otherwise controversial speech on the Internet.

## **3) Risk of litigation**

Some people in the ICANN community are under the mistaken impression that suppressing controversial gTLDs will protect it from litigation. Nothing could be further from the truth. By introducing subjective and culturally divisive standards into the evaluation process Recommendation #6 will increase the likelihood of litigation.

ICANN operates under authority from the US Commerce Department. It is undisputed that the US Commerce Department is prohibited from censoring the expression of US citizens in the manner proposed by Recommendation #6. The US Government cannot “contract away” the constitutional protections of its citizens to ICANN any more than it can engage in the censorship itself.

Adoption of Recommendation #6 invites litigation against ICANN to determine whether its censorship policy is compatible with the US First Amendment. An ICANN decision to suppress a gTLD string that would be permitted under US law could and probably would lead to legal challenges to the decision as a form of US Government action.

If ICANN left the adjudication of legal rights up to courts, it could avoid the legal risk and legal liability that this policy of censorship brings upon it.

#### **4) ICANN's mission and core values**

Recommendation #6 exceeds the scope of ICANN's technical mission. It asks ICANN to create rules and adjudicate disputes about what is permissible expression. It enables it to censor expression in domain names that would be lawful in some countries. It would require ICANN and "expert panels" to make decisions about permitting top-level domain names based on arbitrary "morality" judgments and other subjective criteria. Under Recommendation #6, ICANN will evaluate domain names based on ideas about "morality and public order" -- concepts for which there are varying interpretations, in both law and culture, in various parts of the world. Recommendation #6 risks turning ICANN into the arbiter of "morality" and "appropriate" public policy through global rules.

This new role for ICANN conflicts with its intended narrow technical mission, as embodied in its mission and core values. ICANN holds no legitimate authority to regulate in this entirely non-technical area and adjudicate the legal rights of others. This recommendation takes the adjudication of people's rights to use domain names out of the hands of democratically elected representatives and into the hands of "expert panels" or ICANN staff and board with no public accountability.

Besides exceeding the scope of ICANN's authority, Recommendation #6 seems unsure of its objective. It mandates "morality and public order" in domain names, but then lists, as examples of the type of rights to protect, the WTO TRIPS Agreement and all 24 World Intellectual Property (WIPO) Treaties, which deal with economic and trade rights, and have little to do with "morality and public order". Protection for intellectual property rights was fully covered in Recommendation #3, and no explanation has been provided as to why intellectual property rights would be listed again in a recommendation on "morality and public order", an entirely separate concept.

In conclusion Recommendation #6 exceeds ICANN's authority, ignores Internet users' free expression rights, and its adoption would impose an enormous burden on and liability for ICANN. It should not be adopted by the Board of Directors in the final policy decision for new gtlds.

## Annex B – Nominating Committee Appointee Avri Doria<sup>80</sup>: Individual Comments

Comments from Avri Doria

The “Personal level of support” indications fall into 3 categories:

- Support: these are principles, recommendations or guidelines that are compatible with my personal opinions
- Support with concerns: While these principles, recommendations and guidelines are not incompatible with my personal opinions, I have some concerns about them.
- Accept with concern: these recommendations and guidelines do not necessarily correspond to my personal opinions, but I am able to accept them in that they have the broad support of the committee. I do, however, have concerns with these recommendations and guideline.

I believe these comments are consistent with comments I have made throughout the process and do not constitute new input.

### Principles

#	Personal level of support	Explanation
A	Support	
B	Support with concerns	While I strongly support the introduction of IDN TLDS, I am concerned that the unresolved issues with IDN ccTLD equivalents may interfere with the introduction of IDN TLDs. I am also concerned that some of these issues could impede the introduction of some new ASCII TLDs dealing with geographically related identifiers.
C	Support	
D	Support with concerns	While I favor the establishment of a minimum set of necessary technical criteria, I am concerned that this set actually be the basic minimum set necessary to protect the stability, security and global interoperability.

<sup>80</sup> Ms Doria took over from former GNSO Council Chairman (and GNSO new TLDs Committee Chairman) Dr Bruce Tonkin on 7 June 2007. Ms Doria’s term runs until 31 January 2008.

#	Personal level of support	Explanation
E-G	Support	

## Recommendations

#	Level of support	Explanation
1	Support	
2	Accept with concern	<p>My concern involves using definitions that rely on legal terminology established for trademarks for what I believe should be a policy based on technical criteria.</p> <ul style="list-style-type: none"> <li>• In the first instance I believe that this is essentially a technical issue that should have been resolved with reference to typography, homologues, orthographic neighbourhood, transliteration and other technically defined attributes of a name that would make it unacceptable. There is a large body of scientific and technical knowledge and description in this field that we could have drawn on.</li> <li>• By using terms that rely on the legal language of trademark law, I believe we have created an implicit redundancy between recommendations 2 and 3. I.e., I believe both 2 and 3 can be used to protect trademarks and other intellectual property rights, and while 3 has specific limitations, 2 remains open to full and varied interpretation.</li> <li>• As we begin to consider IDNs, I am concerned that the interpretations of confusingly similar may be used to eliminate many potential TLDs based on translation. That is, when a translation may have the same or similar meaning to an existing TLD, that the new name may be eliminated because it is considered confusing to users who know both languages.</li> </ul>

#	Level of support	Explanation
3	Support with concerns	<p>My first concern relates to the protection of what can be called the linguistic commons. While it is true that much of trademark law and practice does protect general vocabulary and common usage from trademark protection, I am not sure that this is always the case in practice.</p> <p>I am also not convinced that trademark law and policy that applies to specific product type within a specific locale is entirely compatible with a general and global naming system.</p>
4	Support	
5	Support with concerns	<p>Until such time as the technical work on IDNAbis is completed, I am concerned about establishing reserved name rules connected to IDNs. My primary concern involves policy decisions made in ICANN for reserved names becoming hard coded in the IDNAbis technical solution and thus becoming technical constraints that are no longer open to future policy reconsideration.</p>
6	Accept with concern	<p>My primary concern focuses on the term 'morality'. While public order is frequently codified in national laws and occasionally in international law and conventions, the definition of what constitutes morality is not generally codified, and when it is, I believe it could be referenced as public order.</p> <p>This concern is related to the broad set of definitions used in the world to define morality. By including morality in the list of allowable exclusions we have made the possible exclusion list indefinitely large and have subjected the process to the consideration of all possible religious and ethical systems. ICANN or the panel of reviewers will also have to decide between different sets of moral principles, e.g, a morality that holds that people should be free to express themselves in all forms of media and those who believe that people should be free from exposure to any expression that is prohibited by their faith or moral principles. This recommendation will also subject the process to the fashion and occasional demagoguery of political correctness. I do not understand how ICANN or any expert panel will be</p>

#	Level of support	Explanation
		able to judge that something should be excluded based on reasons of morality without defining, at least de-facto, an ICANN definition of morality? And while I am not a strict constructionist and sometimes allow for the broader interpretation of ICANN's mission, I do not believe it includes the definition of a system of morality.
7	Support	
8	Accept with concern	<p>While I accept that a prospective registry must show adequate operational capability, creating a financial criteria is of concern. There may be many different ways of satisfying the requirement for operational capability and stability that may not be demonstrable in a financial statement or traditional business plan. E.g., in the case of an less developed community, the registry may rely on volunteer effort from knowledgeable technical experts.</p> <p>Another concern I have with financial requirements and high application fees is that they may act to discourage applications from developing nations or indigenous and minority peoples that have a different set of financial opportunities or capabilities than those recognized as acceptable within an expensive and highly developed region such as Los Angeles or Brussels.</p>
9,10, 12-14	Support	
15	Support with concerns	<p>In general I support the idea that a registry that is doing a good job should have the expectancy of renewal. I do, however, believe that a registry, especially a registry with general market dominance, or specific or local market dominance, should be subject to comment from the relevant user public and to evaluation of that public comment before renewal. When performance is satisfactory, there should an expectation of renewal. When performance is not satisfactory, there should be some procedure for correcting the situation before renewal.</p>
16-19	Support	

#	Level of support	Explanation
20	Support with concerns	In general I support the policy though I do have concerns about the implementation which I discuss below in relation to IG (P)

### Implementation Guidelines

#	Level of support	Explanation
A-E	Support	
F	Accept with concern	In designing a New gTLD process, one of the original design goals had been to design a predictable and timely process that did not include the involvement of the Board of Directors except for very rare and exceptional cases and perhaps in the due diligence check of a final approval. My concern is that the use of Board in step (iii) may make them a regular part of many of the application procedure and may overload both the Board and the process. If every dispute can fall through to Board consideration in the process sieve, then the incentive to resolve the dispute earlier will be lessened.
G-M	Support	
N	Support with concerns	I strongly support the idea of financial assistance programs and fee reduction for less developed communities. I am concerned that not providing pricing that enables applications from less developed countries and communities may serve to increase the divide between the haves and the have nots in the Internet and may lead to a foreign 'land grab' of choice TLD names, especially IDN TLD names in a new form of resource colonialism because only those with well developed funding capability will be able to participate in the process as currently planned.
O	Support	
P	Support with concerns	While I essentially agree with the policy recommendation and its implementation guideline, its social justice and fairness depends heavily on the implementation issues. While the implementation

#	Level of support	Explanation
		<p>details are not yet settled, I have serious concerns about the published draft plans of the ICANN staff in this regard. The current proposal involves using fees to prevent vexatious or unreasonable objections. In my personal opinion this would be a cause of social injustice in the application of the policy as it would prejudice the objection policy in favor of the rich. I also believe that an objection policy based on financial means would allow for well endowed entities to object to any term they found objectionable, hence enabling them to be as vexatious as they wish to be.</p> <p>In order for an objection system to work properly, it must be fair and it must allow for any applicant to understand the basis on which they might have to answer an objection. If the policy and implementation are clear about objections only being considered when they can be shown to cause irreparable harm to a community then it may be possible to build a just process. In addition to the necessity for there to be strict filters on which potential objections are actually processed for further review by an objections review process, it is essential that an external and impartial professional review panel have a clear basis for judging any objections.</p> <p>I do not believe that the ability to pay for a review will provide a reasonable criteria, nor do I believe that financial barriers are an adequate filter for stopping vexatious or unreasonable objections though they are a sufficient barrier for the poor.</p> <p>I believe that ICANN should investigate other methods for balancing the need to allow even the poorest to raise an issue of irreparable harm while filtering out unreasonable disputes. I believe, as recommend in the Reserved Names Working group report, that the ALAC and GAC may be an important part of the solution. IG (P) currently includes support for treating ALAC and GAC as established institutions in regard to raising objections to TLD concerns. I believe this is an important part of the policy recommendation and should be retained in the implementation. I believe that it should be possible for the ALAC or GAC, through some internal procedure that they define, to take up the cause of the individual</p>

#	Level of support	Explanation
		complainant and to request a review by the external expert review panel. Some have argued that this is unacceptable because it operationalizes these Advisory Committees. I believe we do have precedence for such an operational role for volunteers within ICANN and that it is in keeping with their respective roles and responsibilities as representatives of the user community and of the international community of nations. I strongly recommend that such a solution be included in the Implementation of the New gTLD process.
Q	Support	

## **Annex C – NCUC Minority Statement: Recommendation 20 and Implementation Guidelines F, H & P**

### **STATEMENT OF DISSENT ON RECOMMENDATION #20 & IMPLEMENTATION GUIDELINES F, H, & P IN THE GNSO NEW GTLD COMMITTEE'S FINAL REPORT FROM THE NON-COMMERCIAL USERS CONSTITUENCY (NCUC)**

#### **RE: DOMAIN NAME OBJECTION AND REJECTION PROCESS**

25 July 2007

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#### **Text of Recommendation #20:**

"An application will be rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be explicitly or implicitly targeted."

#### **Text of Implementation Guideline F:**

If there is contention for strings, applicants may:

- i) resolve contention between them within a pre-established timeframe
- ii) if there is no mutual agreement, a claim to support a community by one party will be a reason to award priority to that application. If there is no such claim, and no mutual agreement a process will be put in place to enable efficient resolution of contention and;
- iii) the ICANN Board may be used to make a final decision, using advice from staff and expert panels.

#### **Text of Implementation Guideline H:**

External dispute providers will give decisions on complaints.

#### **Text of Implementation Guideline P:**

The following process, definitions, and guidelines refer to Recommendation 20.

#### **Process**

Opposition must be objection based.

Determination will be made by a dispute resolution panel constituted for the purpose.

The objector must provide verifiable evidence that it is an established institution of the community (perhaps like the RSTEP pool of panelists from which a small panel would be constituted for each objection).

Guidelines

The task of the panel is the determination of substantial opposition.

a) substantial

In determining substantial the panel will assess the following: significant portion, community, explicitly targeting, implicitly targeting, established institution, formal existence, detriment.

b) significant portion:

In determining significant portion the panel will assess the balance between the level of objection submitted by one or more established institutions and the level of support provided in the application from one or more established institutions. The panel will assess significance proportionate to the explicit or implicit targeting.

c) community

Community should be interpreted broadly and will include for example an economic sector, a cultural community, or a linguistic community. It may also be a closely related community which believes it is impacted.

d) explicitly targeting

Explicitly targeting means there is a description of the intended use of the TLD in the application.

e) implicitly targeting

Implicitly targeting means that the objector makes an assumption of targeting or that the objector believes there may be confusion by users over its intended use.

f) established institution

An institution that has been in formal existence for at least 5 years. In exceptional cases, standing may be granted to an institution that has been in existence for fewer than 5 years. Exceptional circumstance include but are not limited to reorganisation, merger, or an inherently younger community. The following ICANN organizations are defined as established institutions: GAC, ALAC, GNSO, ccNSO, ASO.

g) formal existence

Formal existence may be demonstrated by: appropriate public registration, public historical evidence, validation by a government, intergovernmental organization, international treaty organisation or similar.

h) detriment

<< A >> Evidence of detriment to the community or to users more widely must be provided.

<< B >> [A likelihood of detriment to the community or to users more widely must be provided.]

**Recommendation #20**

The Non-Commercial Users Constituency (NCUC) Dissenting Statement on Recommendation #20 of the New GTLD Committee's Final Report<sup>81</sup> should be read in combination with Implementation Guidelines F, H & P, which detail the implementation of Recommendation #20. This statement should also be read in conjunction with its statement<sup>82</sup> of 13 June 2007 on the committee's draft report.

NCUC cannot support the committee's proposal for ICANN to establish a broad objection and rejection process for domain names that empowers ICANN and its "experts" to adjudicate the legal rights of domain name applicants (and objectors). The proposal would also empower ICANN and its "experts" to invent entirely new rights to domain names that do not exist in law and that will compete with existing legal rights to domains.

However "good-intentioned", the proposal would inevitably set up a system that decides legal rights based on subjective beliefs of "expert panels" and the amount of insider lobbying. The proposal would give "established institutions" veto power over applications for domain names to the detriment of innovators and start-ups. The proposal is further flawed because it makes no allowances for generic words to which no community claims exclusive "ownership" of. Instead, it wants to assign rights to use language based on subjective standards and will over-regulate to the detriment of competition, innovation, and free expression.

There is no limitation on the type of objections that can be raised to kill a domain name, no requirement that actual harm be shown to deny an application, and no recourse for the wrongful denial of legal rights by ICANN and its experts under this proposal. An applicant must be able to appeal decisions of ICANN and its experts to courts, who have more competence and authority to decide the applicant's legal rights. Legal due process requires maintaining a right to appeal these decisions to real courts.

The proposal is hopelessly flawed and will result in the improper rejection of many legitimate domain names. The reasons permitted to object to a domain are infinite in number. Anyone may make an objection; and an application will automatically be rejected upon a very low threshold of "detriment" or an even lower standard of "a likelihood of detriment" to anyone. Not a difficult bar to meet.

If ICANN attempted to put this policy proposal into practice it would intertwine itself in general policy debates, cultural clashes, business feuds, religious wars, and national politics, among a few of the disputes ICANN would have to rule on through this domain name policy.

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<sup>81</sup> Available at: <http://forum.icann.org/lists/gtld-council/pdfOQqgaRNrXf.pdf>

<sup>82</sup> Available at: <http://ipjustice.org/wp/2007/06/13/ncuc-newgtld-stmt-june2007/>

The proposal operates under false assumptions of “communities” that can be defined, and that parties can be rightfully appointed representatives of “the community” by ICANN. The proposal gives preference to “established institutions” for domain names, and leaves applicants’ without the backing of “established institutions” with little right to a top-level domain. The proposal operates to the detriment of small-scale start-ups and innovators who are clever enough to come up with an idea for a domain first, but lack the insider-connections and financial resources necessary to convince an ICANN panel of their worthiness.

It will be excessively expensive to apply for either a controversial or a popular domain name, so only well-financed “established institutions” will have both the standing and financial wherewithal to be awarded a top-level domain. The proposal privileges who is awarded a top-level domain, and thus discourages diversity of thought and the free flow of information by making it more difficult to obtain information on controversial ideas or from innovative new-comers.

### **Implementation Guideline F**

NCUC does not agree with the part of Implementation Guideline F that empowers ICANN identified “communities” to support or oppose applications. Why should all “communities” agree before a domain name can be issued? How to decide who speaks for a “community”?

NCUC also notes that ICANN’s Board of Directors would make the final decisions on applications and thus the legal rights of applicants under proposed IG-F. ICANN Board Members are not democratically elected, accountable to the public in any meaningful way, or trained in the adjudication of legal rights. Final decisions regarding legal rights should come from legitimate law-making processes, such as courts.

“Expert panels” or corporate officers are not obligated to respect an applicant’s free expression rights and there is no recourse for a decision by the panel or ICANN for rights wrongfully denied. None of the “expert” panelists are democratically elected, nor accountable to the public for their decisions. Yet they will take decisions on the boundaries between free expression and trademark rights in domain names; and “experts” will decide what ideas are too controversial to be permitted in a domain name under this process.

### **Implementation Guideline H**

Implementation Guideline H recommends a system to adjudicate legal rights that exists entirely outside of legitimate democratic law-making processes. The process sets up a system of unaccountable “private law” where “experts” are free to pick and choose favored laws, such as trademark rights, and ignore disfavored laws, such as free expression guarantees.

IG-H operates under the false premise that external dispute providers are authorized to adjudicate the legal rights of domain name applicants and objectors. It further presumes that such expert panels will be qualified to adjudicate the legal rights of applicants and others. But undertaking the creation of an entirely new international dispute resolution process for the adjudication of legal rights and the creation of new rights is not something that can be delegated to a team of experts. Existing international law that takes into account conflict of laws, choice of laws, jurisdiction, standing, and due process must be part of any legitimate process; and the applicant's legal rights including freedom of expression rights must be respected in the process.

### **Implementation Guideline P**

"The devil is in the details" of Implementation Guideline P as it describes in greater detail the proposed adversarial dispute process to adjudicate legal rights to top-level domain names in Recommendation #20. IG-P mandates the rejection of an application if there is "substantial opposition" to it according to ICANN's expert panel. But "substantial" is defined in such a way so as to actually mean "insubstantial" and as a result many legitimate domain names would be rejected by such an extremely low standard for killing an application.

Under IG-P, opposition against and support for an application must be made by an "established institution" for it to count as "significant", again favoring major industry players and mainstream cultural institutions over cultural diversity, innovative individuals, small niche, and medium-sized Internet businesses.

IG-P states that "community" should be interpreted broadly, which will allow for the maximum number of objections to a domain name to count against an application. It includes examples of "the economic sector, cultural community or linguistic community" as those who have a right to complain about an application. It also includes any "related community which believes it is impacted." So anyone who claims to represent a community and believes to be impacted by a domain name can file a complaint and have standing to object to another's application.

There is no requirement that the objection be based on legal rights or the operational capacity of the applicant. There is no requirement that the objection be reasonable or the belief about impact to be reasonable. There is no requirement that the harm be actual or verifiable. The standard for "community" is entirely subjective and based on the personal beliefs of the objector.

The definition of "implicitly targeting" further confirms this subjective standard by inviting objections where "the objector makes the assumption of targeting" and also where "the objector believes there may be confusion by users". Such a subjective process will inevitably result in the rejection of many

legitimate domain names.

Picking such a subjective standard conflicts with Principle A in the Final Report that states domain names must be introduced in a “predictable way”, and also with Recommendation 1 that states “All applicants for a new gTLD registry should be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process.” The subjectivity and unpredictability invited into the process by Recommendation #20 turn Principle A and Recommendation 1 from the same report upside down.

Besides the inherent subjectivity, the standard for killing applications is remarkably low. An application need not be intended to serve a particular community for “community-based” objections to kill the application under the proposal. Anyone who believed that he or she was part of the targeted community or who believes others face “detriment” have standing to object to a domain name, and the objection weighs in favor of “significant opposition”. This standard is even lower than the “reasonable person” standard, which would at least require that the belief be “reasonable” for it to count against an applicant. The proposed standard for rejecting domains is so low it even permits unreasonable beliefs about a domain name to weigh against an applicant.

If a domain name does cause confusion, existing trademark law and unfair competition law have dealt with it for years and already balanced intellectual property rights against free expression rights in domain names. There is neither reason nor authority for ICANN processes to overtake the adjudication of legal rights and invite unreasonable and illegitimate objections to domain names.

IG-P falsely assumes that the number of years in operation is indicative of one’s right to use language. It privileges entities over 5 years old with objection rights that will effectively veto innovative start-ups who cannot afford the dispute resolution process and will be forced to abandon their application to the incumbents.

IG-P sets the threshold for harm that must be shown to kill an application for a domain name remarkably low. Indeed harm need not be actual or verified for an application to be killed based on “substantial opposition” from a single objector.

Whether the committee selects the unbounded definition for “detriment” that includes a “likelihood of detriment” or the narrower definition of “evidence of detriment” as the standard for killing an application for a domain name is largely irrelevant. The difference is akin to re-arranging the deck chairs on the Titanic. ICANN will become bogged down with the approval of domain names either way, although it is worth noting that “likelihood of detriment” is a

very long way from “substantial harm” and an easy standard to meet, so will result in many more domain names being rejected.

The definitions and guidelines detailed in IG-P invite a lobby-fest between competing businesses, instill the “heckler’s veto” into domain name policy, privilege incumbents, price out of the market non-commercial applicants, and give third-parties who have no legal rights to domain names the power to block applications for those domains. A better standard for killing an application for non-technical reasons would be for a domain name to be shown to be illegal in the applicant’s jurisdiction before it can be rejected.

In conclusion, the committee’s recommendation for domain name objection and rejection processes are far too broad and unwieldy to be put into practice. They would stifle freedom of expression, innovation, cultural diversity, and market competition. Rather than follow existing law, the proposal would set up an illegitimate process that usurps jurisdiction to adjudicate peoples’ legal rights (and create new rights) in a process designed to favor incumbents. The adoption of this “free-for-all” objection and rejection process will further call into question ICANN’s legitimacy to govern and its ability to serve the global public interest that respects the rights of all citizens.

NCUC respectfully submits that ICANN will best serve the global public interest by resisting the temptation to stray from its technical mandate and meddle in international lawmaking as proposed by Rec. #20 and IG-F, IG-H, and IG-P of the New GTLD Committee Final Report.

## REFERENCE MATERIAL -- GLOSSARY<sup>83</sup>

TERM	ACRONYM & EXPLANATION
A-label	The A-label is what is transmitted in the DNS protocol and this is the ASCII-compatible (ACE) form of an IDNA string; for example "xn--11b5bs1di".
ASCII Compatible Encoding	ACE ACE is a system for encoding Unicode so each character can be transmitted using only the letters a-z, 0-9 and hyphens. Refer also to <a href="http://www.ietf.org/rfc/rfc3467.txt?number=3467">http://www.ietf.org/rfc/rfc3467.txt?number=3467</a>
American Standard Code for Information Exchange	ASCII ASCII is a common numerical code for computers and other devices that work with text. Computers can only understand numbers, so an ASCII code is the numerical representation of a character such as 'a' or '@'. See above referenced RFC for more information.
Advanced Research Projects Agency	ARPA <a href="http://www.darpa.mil/body/arpa_darpa.html">http://www.darpa.mil/body/arpa_darpa.html</a>
Commercial & Business Users Constituency	CBUC <a href="http://www.bizconst.org/">http://www.bizconst.org/</a>
Consensus Policy	A defined term in all ICANN registry contracts usually found in Article 3 (Covenants). See, for example, <a href="http://www.icann.org/tlds/agreements/biz/registry-agmt-08dec06.htm">http://www.icann.org/tlds/agreements/biz/registry-agmt-08dec06.htm</a>
Country Code Names Supporting Organization	ccNSO <a href="http://ccnso.icann.org/">http://ccnso.icann.org/</a>
Country Code Top Level Domain	ccTLD Two letter domains, such as .uk (United Kingdom), .de (Germany) and .jp (Japan) (for example), are called country code top level domains (ccTLDs) and correspond to a country, territory, or other geographic location. The rules and policies for registering domain names in the ccTLDs vary significantly and ccTLD registries limit use of the ccTLD to citizens of the corresponding country.  Some ICANN-accredited registrars provide registration services in the ccTLDs in addition to registering names in .biz, .com, .info, .name, .net and .org, however, ICANN does not specifically accredit registrars to provide ccTLD registration services.

<sup>83</sup> This glossary has been developed over the course of the policy development process. Refer here to ICANN's glossary of terms <http://www.icann.org/general/glossary.htm> for further information.

	For more information regarding registering names in ccTLDs, including a complete database of designated ccTLDs and managers, please refer to <a href="http://www.iana.org/cctld/cctld.htm">http://www.iana.org/cctld/cctld.htm</a> .
Domain Names	<p>The term <b>domain name</b> has multiple related meanings: A name that identifies a computer or computers on the internet. These names appear as a component of a Web site's URL, e.g. <a href="http://www.wikipedia.org">www.wikipedia.org</a>. This type of domain name is also called a hostname.</p> <p>The product that Domain name registrars provide to their customers. These names are often called <b>registered domain names</b>.</p> <p>Names used for other purposes in the Domain Name System (DNS), for example the special name which follows the @ sign in an email address, or the Top-level domains like .com, or the names used by the Session Initiation Protocol (VoIP), or DomainKeys.</p> <p><a href="http://en.wikipedia.org/wiki/Domain_names">http://en.wikipedia.org/wiki/Domain_names</a></p>
Domain Name System	The Domain Name System (DNS) helps users to find their way around the Internet. Every computer on the Internet has a unique address - just like a telephone number - which is a rather complicated string of numbers. It is called its "IP address" (IP stands for "Internet Protocol"). IP Addresses are hard to remember. The DNS makes using the Internet easier by allowing a familiar string of letters (the "domain name") to be used instead of the arcane IP address. So instead of typing 207.151.159.3, you can type <a href="http://www.internic.net">www.internic.net</a> . It is a "mnemonic" device that makes addresses easier to remember.
Generic Top Level Domain	<p>gTLD</p> <p>Most TLDs with three or more characters are referred to as "generic" TLDs, or "gTLDs". They can be subdivided into two types, "sponsored" TLDs (sTLDs) and "unsponsored TLDs" (uTLDs), as described in more detail below.</p> <p>In the 1980s, seven gTLDs (.com, .edu, .gov, .int, .mil, .net, and .org) were created. Domain names may be registered in three of these (.com, .net, and .org) without restriction; the other four have limited purposes.</p> <p>In 2001 &amp; 2002 four new unsponsored TLDs (.biz, .info, .name, and .pro) were introduced. The other three new TLDs (.aero, .coop, and .museum) were sponsored.</p> <p>Generally speaking, an unsponsored TLD operates under policies established by the global Internet community directly through the ICANN process, while a sponsored TLD is a specialized TLD that has a sponsor representing the narrower community that is most affected by the TLD. The sponsor thus carries out delegated policy-formulation responsibilities over many matters concerning the TLD.</p>
Governmental Advisory Committee	<p>GAC</p> <p><a href="http://gac.icann.org/web/index.shtml">http://gac.icann.org/web/index.shtml</a>  <a href="http://gac.icann.org/web/index.shtml">http://gac.icann.org/web/index.shtml</a></p>

Intellectual Property Constituency	IPC <a href="http://www.ipconstituency.org/">http://www.ipconstituency.org/</a>
Internet Service & Connection Providers Constituency	ISPCP
Internationalized Domain Names	IDNs IDNs are domain names represented by local language characters. These domain names may contain characters with diacritical marks (required by many European languages) or characters from non-Latin scripts like Arabic or Chinese.
Internationalized Domain Names in Application	IDNA IDNA is a protocol that makes it possible for applications to handle domain names with non-ASCII characters. IDNA converts domain names with non-ASCII characters to ASCII labels that the DNS can accurately understand. These standards are developed within the IETF ( <a href="http://www.ietf.org">http://www.ietf.org</a> )
Internationalized Domain Names – Labels	IDN A Label The A-label is what is transmitted in the DNS protocol and this is the ASCII-compatible ACE) form of an IDN A string. For example “xn-1lq90i”. IDN U Label The U-label is what should be displayed to the user and is the representation of the IDN in Unicode. For example “北京” (“Beijing” in Chinese). LDH Label The LDH-label strictly refers to an all-ASCII label that obeys the "hostname" (LDH) conventions and that is not an IDN; for example “icann” in the domain name “icann.org”
Internationalized Domain Names Working Group	IDN-WG <a href="http://forum.icann.org/lists/gnso-idn-wg/">http://forum.icann.org/lists/gnso-idn-wg/</a>
Letter Digit Hyphen	LDH The hostname convention used by domain names before internationalization. This meant that domain names could only practically contain the letters a-z, digits 0-9 and the hyphen “-”. The term “LDH code points” refers to this subset. With the introduction of IDNs this rule is no longer relevant for all domain names. The LDH-label strictly refers to an all-ASCII label that obeys the "hostname" (LDH) conventions and that is not an IDN; for example “icann” in the domain name “icann.org”.
Nominating Committee	NomCom <a href="http://nomcom.icann.org/">http://nomcom.icann.org/</a>
Non-Commercial Users Constituency	NCUC <a href="http://www.ncdnhc.org/">http://www.ncdnhc.org/</a>

Policy Development Process	PDP See <a href="http://www.icann.org/general/archive-bylaws/bylaws-28feb06.htm#AnnexA">http://www.icann.org/general/archive-bylaws/bylaws-28feb06.htm#AnnexA</a>
Protecting the Rights of Others Working Group	PRO-WG See the mailing list archive at <a href="http://forum.icann.org/lists/gnso-pro-wg/">http://forum.icann.org/lists/gnso-pro-wg/</a>
Punycode	Punycode is the ASCII-compatible encoding algorithm described in Internet standard [RFC3492]. This is the method that will encode IDNs into sequences of ASCII characters in order for the Domain Name System (DNS) to understand and manage the names. The intention is that domain name registrants and users will never see this encoded form of a domain name. The sole purpose is for the DNS to be able to resolve for example a web-address containing local characters.
Registrar	Domain names ending with .aero, .biz, .com, .coop, .info, .museum, .name, .net, .org, and .pro can be registered through many different companies (known as "registrars") that compete with one another. A listing of these companies appears in the Accredited Registrar Directory.  The registrar asks registrants to provide various contact and technical information that makes up the domain name registration. The registrar keeps records of the contact information and submits the technical information to a central directory known as the "registry."
Registrar Constituency	RC <a href="http://www.icann-registrars.org/">http://www.icann-registrars.org/</a>
Registry	A registry is the authoritative, master database of all domain names registered in each Top Level Domain. The registry operator keeps the master database and also generates the "zone file" which allows computers to route Internet traffic to and from top-level domains anywhere in the world. Internet users don't interact directly with the registry operator. Users can register names in TLDs including .biz, .com, .info, .net, .name, .org by using an ICANN-Accredited Registrar.
Registry Constituency	RyC <a href="http://www.gtldregistries.org/">http://www.gtldregistries.org/</a>
Request for Comment	RFC A full list of all Requests for Comment <a href="http://www.rfc-editor.org/rfcxx00.html">http://www.rfc-editor.org/rfcxx00.html</a> Specific references used in this report are shown in the next column.  This document uses language, for example, "should", "must" and "may", consistent with RFC2119.  <a href="ftp://ftp.rfc-editor.org/in-notes/rfc1591.txt">ftp://ftp.rfc-editor.org/in-notes/rfc1591.txt</a> <a href="ftp://ftp.rfc-editor.org/in-notes/rfc2119.txt">ftp://ftp.rfc-editor.org/in-notes/rfc2119.txt</a> <a href="ftp://ftp.rfc-editor.org/in-notes/rfc2606.txt">ftp://ftp.rfc-editor.org/in-notes/rfc2606.txt</a>

Reserved Names Working Group	<p>RN-WG</p> <p>See the mailing list archive at <a href="http://forum.icann.org/lists/gnso-rn-wg/">http://forum.icann.org/lists/gnso-rn-wg/</a></p>
Root server	<p>A <b>root nameserver</b> is a DNS server that answers requests for the root namespace domain, and redirects requests for a particular top-level domain to that TLD's nameservers. Although any local implementation of DNS can implement its own private root nameservers, the term "root nameserver" is generally used to describe the thirteen well-known root nameservers that implement the root namespace domain for the Internet's official global implementation of the Domain Name System.</p> <p>All domain names on the Internet can be regarded as ending in a full stop character e.g. "en.wikipedia.org.". This final dot is generally implied rather than explicit, as modern DNS software does not actually require that the final dot be included when attempting to translate a domain name to an IP address. The empty string after the final dot is called the root domain, and all other domains (i.e. .com, .org, .net, etc.) are contained within the root domain. <a href="http://en.wikipedia.org/wiki/Root_server">http://en.wikipedia.org/wiki/Root_server</a></p>
Sponsored Top Level Domain	<p>sTLD</p> <p>A Sponsor is an organization to which some policy making is delegated from ICANN. The sponsored TLD has a Charter, which defines the purpose for which the sponsored TLD has been created and will be operated. The Sponsor is responsible for developing policies on the delegated topics so that the TLD is operated for the benefit of a defined group of stakeholders, known as the Sponsored TLD Community, that are most directly interested in the operation of the TLD. The Sponsor also is responsible for selecting the registry operator and to varying degrees for establishing the roles played by registrars and their relationship with the registry operator. The Sponsor must exercise its delegated authority according to fairness standards and in a manner that is representative of the Sponsored TLD Community.</p>
U-label	<p>The U-label is what should be displayed to the user and is the representation of the Internationalized Domain Name (IDN) in Unicode.</p>
Unicode Consortium	<p>A not-for-profit organization found to develop, extend and promote use of the Unicode standard. See <a href="http://www.unicode.org">http://www.unicode.org</a></p>
Unicode	<p>Unicode is a commonly used single encoding scheme that provides a unique number for each character across a wide variety of languages and scripts. The Unicode standard contains tables that list the code points for each local character identified. These tables continue to expand as more characters are digitalized.</p>



R-4

RESPONDENT'S EXHIBIT



## The Internet Corporation for Assigned Names and Numbers

To All Prospective Applicants for New gTLDs –

Since ICANN's founding ten years ago as a not-for-profit, multi-stakeholder organization dedicated to coordinating the Internet's addressing system, one of its foundational principles has been to promote competition in the domain-name marketplace while ensuring Internet security and stability.

We are now engaging the Internet community in agreeing a way forward to introduce new gTLDs in the domain name space. Such expansion is driven by the demand for more innovation, choice and change to the Internet's addressing system, now constrained by only 21 generic top-level domain names. In a world with 1.5 billion Internet users—and growing—diversity, choice and competition are key to the continued success and reach of the global network.

The launch of these coming new gTLD application rounds followed a detailed and lengthy consultation process with all constituencies of the global Internet community. Representatives from a wide variety of stakeholders—governments, individuals, civil society, business and intellectual property constituencies, and the technology community—were engaged in discussions for more than 18 months. In October 2007, the Generic Names Supporting Organization (GNSO)—one of the groups that coordinate global Internet policy at ICANN—completed its policy development work on new gTLDs and approved a set of recommendations. Major contributors to this policy work were ICANN's Governmental Advisory Committee (GAC), At-Large Advisory Committee (ALAC), Country Code Names Supporting Organization (ccNSO) and Security and Stability Advisory Committee (SSAC). All this policy development work culminated with ICANN's Board of Directors deciding to adopt the community-developed policy at the ICANN Paris meeting in June 2008. You can see a thorough brief to the policy process and outcomes at <http://gns0.icann.org/issues/new-gtlds/>.

Please note that the Applicant Guidebook that follows this letter is a draft. Applicants should not rely on any of the proposed details of the new gTLD program, as the program remains subject to further consultation and revision. Also, some of the modules in this guidebook highlight areas of the process that remain under development. These areas will be made available for public consultation in the near future.

In addition to the Draft Applicant Guidebook, ICANN is posting a series of papers that serve as explanatory memoranda to assist the Internet community to better understand the implementation work.

ICANN expects to engage in a productive and robust dialogue with the Internet community through a consultative process. Comments will be used to revise and prepare the final Applicant Guidebook, to be released early in 2009.

The New gTLD Program enables the Internet community to open up the name space to new and innovative uses for top-level domains, and can meet some of the needs unmet by the current market. It has the potential to be one of the biggest influences on the future of the Internet.

Sincerely,

Paul Twomey  
President and CEO

# New gTLD Program: Draft Applicant Guidebook (Draft RFP)

Please note that this is a discussion draft only. Potential applicants should not rely on any of the proposed details of the new gTLD program as the program remains subject to further consultation and revision.



24 October 2008

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# *New gTLD Program: Applicant Guidebook*

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## *How to Use*

The Draft Applicant Guidebook (Request for Proposals) consists of a series of modules, each focused on specific topics within the application and evaluation process:

### **Module 1: Introduction to the Application Process**

*Provides an overview of the application process, documentation requirements, and fees*

### **Module 2: Evaluation Procedures**

*Describes the various reviews that occur during the evaluation process and criteria for approval of applications*

### **Module 3: Dispute Resolution Procedures**

*Contains the grounds for formal objection by third parties concerning gTLD applications submitted, and the dispute resolution procedure triggered by an objection*

### **Module 4: String Contention Procedures**

*Describes mechanisms for resolving contention when there is more than one qualified applicant for identical or similar gTLD strings*

### **Module 5: Transition to Delegation**

*Describes the final steps required of an applicant, including execution of a registry agreement and completion of pre-delegation tests*

### **Module 6: Terms and Conditions**

*Contains the terms and conditions applicable to all entities submitting an application*

### **Glossary**

*Contains definitions for terms used in the Applicant Guidebook*

ICANN is posting a series of explanatory memoranda to accompany this draft, to provide further details on the background work completed by ICANN. Links to these memoranda are noted within the relevant modules.

All materials contained in the Draft Applicant Guidebook are being presented for public comment. Please note that this is a discussion draft only. Potential applicants should not rely on any of the proposed details of the new gTLD program as the program remains subject to further consultation and revision.



# Draft Applicant Guidebook

## Module 1

Please note that this is a discussion draft only. Potential applicants should not rely on any of the proposed details of the new gTLD program as the program remains subject to further consultation and revision.

24 October 2008

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# Module 1

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## *Introduction to the gTLD Application Process*

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

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

For more about the origins, history and details of ICANN's policies on new gTLDs, please see <http://gns0.icann.org/issues/new-gtlds/>.

A glossary of relevant terms is included with the Draft Applicant Guidebook (Draft RFP).

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

### *1.1 Application Life Cycle and Timelines*

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

#### *1.1.1 Application Submission Dates*

---

The application submission period opens at [time] UTC [date].

The application submission period closes at [time] UTC [date].

Applications may be submitted electronically through ICANN's online application system.

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

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

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

### 1.1.2 Application Processing Stages

This subsection provides an overview of the stages involved in processing an application submitted to ICANN. In Figure 1-1, the shortest and most straightforward path is marked with bold lines, while stages that may or may not apply in any given case are also shown. A brief description of each stage follows.

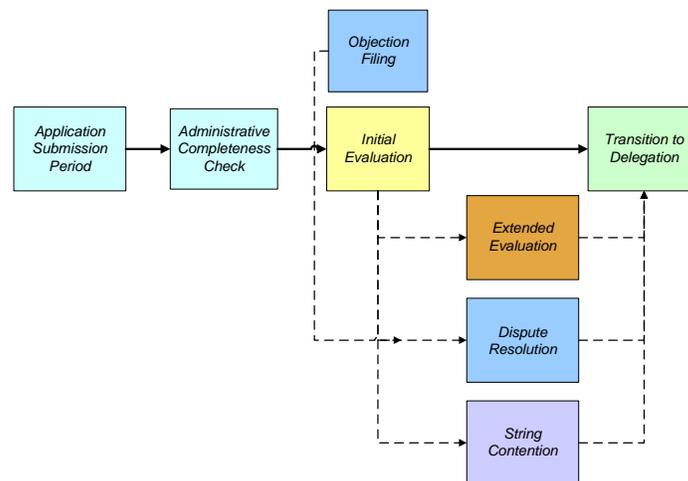


Figure 1-1 – Once submitted to ICANN, applications will pass through multiple stages of processing.

#### 1.1.2.1 Application Submission Period

At the time the application submission period opens, applicants wishing to apply for a new gTLD can become registered users of the online application system.

Through the application system, applicants will answer a series of questions to provide general information, demonstrate financial capability, and demonstrate technical and operational capability. The supporting documents listed in subsection 1.2.3 of this module must also be submitted through the application system.

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

Following the close of the application period, applicants can continue to use the application system as a resource to track the progress of their applications, although they may receive communications from ICANN through other means.

#### ***1.1.2.2 Administrative Completeness Check***

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

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

ICANN will post a list of applications considered complete and ready for evaluation as soon as practical after the close of the application period. The status information for each application will also be updated in the online application system.

#### ***1.1.2.3 Initial Evaluation***

Initial Evaluation will begin immediately after the administrative completeness check concludes. All complete applications will be reviewed during Initial Evaluation.

There are two main elements of the Initial Evaluation:

- String reviews (concerning the applied-for gTLD string); and
- Applicant reviews (concerning the entity applying for the gTLD and its proposed registry services).

Applicant reviews include a determination of whether the applicant has the requisite technical and financial capability to operate a registry.

- Panels of independent evaluators will perform these reviews based on the information provided by each applicant in its responses to the application form.
- There may be one round of questions and answers between the applicant and evaluators to clarify information contained in the application. Refer to Module 2 for further details on the evaluation process.

Evaluators will report whether the applicant passes or fails each of the parts of the Initial Evaluation. These reports will be available in the online application system.

At the conclusion of the Initial Evaluation period, ICANN will post a notice of all applications that have passed the Initial Evaluation. Depending on the volume of applications received, ICANN may post such notices in batches over the course of the Initial Evaluation period.

#### ***1.1.2.4 Objection Filing***

Formal objections to applications can be filed on any of four enumerated grounds by parties with standing to object. The objection filing period will open after ICANN posts the list of complete applications as described in paragraph 1.1.2.2. Objectors will file directly with dispute resolution service providers (DRSPs). Refer to Module 3, Dispute Resolution Procedures, for further details.

The objection filing phase will close following the end of the Initial Evaluation period (refer to paragraph 1.1.2.3). Objections that have been filed during the objection filing phase will be addressed in the dispute resolution phase, which is outlined in paragraph 1.1.2.6 and discussed in detail in Module 3.

All applicants should be aware that third parties have the opportunity to file objections to any application during this period. Applicants whose applications are the subject of a formal objection will have an opportunity to file a response according to the dispute resolution service provider's rules and procedures (refer to Module 3).

An applicant wishing to file a formal objection to another application that has been submitted would do so within

the objection filing period, following the objection filing procedures in Module 3.

#### **1.1.2.5 Extended Evaluation**

*Extended Evaluation applies only to applicants that do not pass Initial Evaluation.*

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

An Extended Evaluation may also be required if the applied-for gTLD string or one or more proposed registry services raise technical issues that might adversely affect the security and stability of the DNS. The Extended Evaluation period provides a time frame for these issues to be investigated. Applicants will be informed if such reviews are required at the end of the Initial Evaluation period. Evaluators and any applicable experts consulted will communicate their conclusions at the end of the Extended Evaluation period. These reports will be available in the online application system.

At the conclusion of the Extended Evaluation period, ICANN will post all evaluator reports from the Initial and Extended Evaluation periods.

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

#### **1.1.2.6 Dispute Resolution**

*Dispute resolution applies only to applicants that are the subject of a formal objection.*

Where formal objections are filed and filing fees paid during the objection filing phase, dispute resolution service providers will initiate and conclude proceedings based on the objections received. The formal objection procedure exists to provide a path for those who wish to object to an application that has been received by ICANN. Dispute resolution service providers provide the fora to adjudicate the proceedings based on the subject matter and the needed expertise.

As a result of the proceeding, either the applicant will prevail (in which case the application can proceed to the next stage), or the objector will prevail (in which case either the application will proceed no further or the application will be bound to a contention resolution procedure). Refer to Module 3, Objection and Dispute Resolution, for detailed information. Applicants will be notified by the Dispute Resolution Service Provider of the results of dispute proceedings. The online application system will also be updated with these results.

#### 1.1.2.7 *String Contention*

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

String contention refers to the scenario in which there is more than one qualified applicant for the same gTLD or for gTLDs that are so similar that they create a probability of detrimental user confusion if more than one is delegated. ICANN will resolve cases of string contention either through comparative evaluation or through an alternative mechanism for efficient resolution of string contention.

In the event of contention between applied-for strings that represent geographical names, the parties may be asked to follow a different process to resolve the contention.

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

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

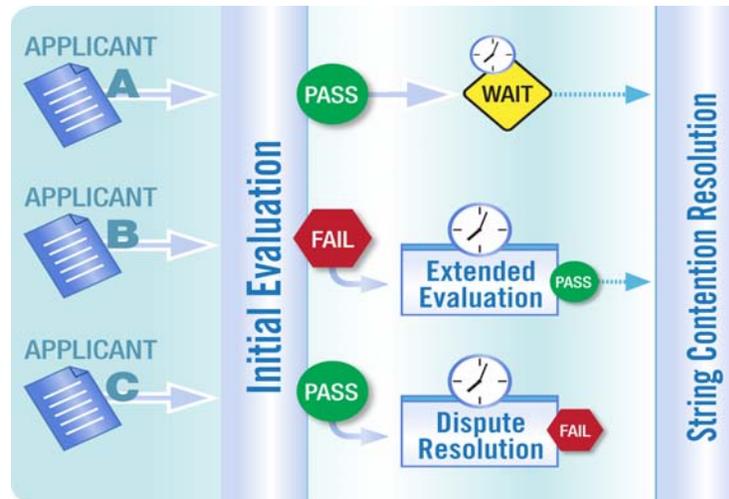


Figure 1-2 – All applications in a contention set must complete all previous evaluation and dispute resolution stages before string contention resolution can begin.

Applicants prevailing in a string contention resolution procedure will proceed toward delegation of applied-for gTLD strings. The online application system will be updated with the resolution of the string contention procedures.

#### 1.1.2.8 Transition to Delegation

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

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

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

### *1.1.3 Accounting for Public Comment in the Evaluation of Applications once the New gTLD Process is Launched*

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

In the new gTLD application process, public comments will be a mechanism for the public to bring relevant information and issues to the attention of those charged with handling new gTLD applications. ICANN will open a public comment forum at the time the applications are publicly posted on ICANN's website (refer to paragraph 1.1.2.2), which will remain open through the application round.

Public comments received will be provided to the evaluators during the Initial and Extended Evaluation periods. Evaluators will have discretion to take the information provided in these comments into consideration as deemed necessary. Consideration of the applicability of the information submitted through public comments will be included in the evaluators' reports.

Public comments may also be relevant to one or more objection grounds. (Refer to Module 3, Dispute Resolution Procedures, for the objection grounds.) ICANN will provide all public comments received to DRSPs, who will have discretion to consider them.

A distinction should be made between public comments, which may be relevant to ICANN's task of determining whether applications meet the established criteria, and formal objections that concern matters outside this evaluation. ICANN created the formal objection process to allow a full and fair consideration of objections based on subject areas outside ICANN's mission and expertise. A party contacting ICANN to pursue an objection will be referred to the formal objection channels designed specifically for resolving these matters in the new gTLD space. More information on the objection and dispute resolution processes is available in Module 3.

### 1.1.4 Sample Application Scenarios

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

Scenario Number	Initial Evaluation	Extended Evaluation	Objection(s) Raised	String Contention	Approved for Subsequent Steps
1	Pass	N/A	None	No	Yes
2	Fail	Pass	None	No	Yes
3	Pass	N/A	None	Yes	Yes
4	Pass	N/A	Applicant prevails	No	Yes
5	Pass	N/A	Objector prevails	N/A	No
6	Fail	Quit	n/a	N/A	No
7	Fail	Fail	n/a	N/A	No
8	Fail	Pass	Applicant prevails	Yes	Yes
9	Fail	Pass	Applicant prevails	Yes	No

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

**Scenario 2 – Extended Evaluation, No Objection, No Contention** – In this case, the application fails one or more aspects of the Initial Evaluation. The applicant is eligible for and requests an Extended Evaluation for the appropriate elements. Here, the application passes the Extended Evaluation. As with Scenario 1, no objections are raised during the objection period, so there is no dispute to resolve. As there is no contention for the gTLD string, the applicant can enter into a registry agreement and the application can proceed toward delegation.

**Scenario 3 – Pass Initial Evaluation, No Objection, Contention** – In this case, the application passes the Initial Evaluation so there is no need for Extended Evaluation. No objections are raised during the objection period, so there is no dispute to resolve and no appeal. However, there are

other applications for the same or a similar gTLD string, so there is contention. In this case, one application wins the contention resolution, and the other contenders are denied their applications, so the winning applicant can enter into a registry agreement and the application can proceed toward delegation.

**Scenario 4 – Pass Initial Evaluation, Win Objection, No Contention** – In this case, the application passes the Initial Evaluation so there is no need for Extended Evaluation. During the objection period, a valid objection is raised by an objector with standing on one of the objection grounds (refer to Module 3, Dispute Resolution Procedures). The objection is heard by a dispute resolution service provider panel that finds in favor of the applicant. The applicant can enter into a registry agreement and the application proceeds toward delegation.

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

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

**Scenario 7 – Fail Initial Evaluation, Fail Extended Evaluation**  
In this case, the application fails one or more steps in the Initial Evaluation. The applicant requests Extended Evaluation for the appropriate elements. However, the application fails Extended Evaluation also. The application does not proceed.

**Scenario 8 – Extended Evaluation, Win Objection, Pass Contention** – In this case, the application fails one or more aspects of the Initial Evaluation. The applicant is eligible for and requests an Extended Evaluation for the appropriate elements. Here, the application passes the Extended Evaluation. During the objection period, one valid objection is raised by an objector with standing. The objection is heard by a dispute resolution service provider

panel that rules in favor of the applicant. However, there are other applications for the same or a similar gTLD string, so there is contention. In this case, the applicant prevails over other applications in the contention resolution procedure, the applicant can enter into a registry agreement and the application can proceed toward the delegation phase.

***Scenario 9 – Extended Evaluation, Objection, Fail***

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

***Transition to Delegation*** – After an application has completed Initial or Extended Evaluation, dispute resolution, if applicable, and string contention, if applicable, the applicant is required to complete a set of steps leading to delegation of the gTLD, including execution of a registry agreement with ICANN, and completion of pre-delegation testing. Refer to Module 5 for a description of the relevant steps in this phase.

### ***1.1.5 Subsequent Application Rounds***

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

## ***1.2 Information for All Applicants***

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### ***1.2.1 Eligibility***

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Any established corporation, organization, or institution in good standing may apply for a new gTLD. Applications from individuals or sole proprietorships will not be considered.

## 1.2.2 *Two Application Types: Open or Community-Based*

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All applicants are required to designate each application for a new gTLD as **open** or **community-based**.

### 1.2.2.1 *Definitions*

For purposes of this RFP, an **open gTLD** is one that can be used for any purpose consistent with the requirements of the application and evaluation criteria, and with the registry agreement. An open gTLD may or may not have a formal relationship with an exclusive registrant or user population. It may or may not employ eligibility or use restrictions.

For purposes of this RFP, a **community-based gTLD** is a gTLD that is operated for the benefit of a defined community consisting of a restricted population. An applicant designating its application as community-based will be asked to substantiate its status as representative of the community it names in the application, and additional information may be requested in the event of a comparative evaluation (refer to Section 4.2 of Module 4). An applicant for a community-based gTLD is expected to:

1. Demonstrate an ongoing relationship with a defined community that consists of a restricted population.
2. Have applied for a gTLD string strongly and specifically related to the community named in the application.
3. Have proposed dedicated registration and use policies for registrants in its proposed gTLD.
4. Have its application endorsed in writing by an established institution representing the community it has named.

### 1.2.2.2 *Implications of Application Designation*

Applicants should understand how their designation as open or community-based will affect application processing at particular stages, as described in the following paragraphs.

**Objection/Dispute Resolution** – All applicants should understand that an objection may be filed against any application on community opposition grounds, even if the applicant has not designated itself as community-based or declared the TLD to be aimed at a particular community. Refer to Module 3, Dispute Resolution Procedures.

**String Contention** – Any applicant that has been identified as part of a contention set (refer to Module 4.1) may be obliged to participate in either a comparative evaluation or another efficient mechanism for contention resolution if the application reaches the string contention stage and the applicant elects to proceed.

A **comparative evaluation** will take place if a community-based applicant in a contention set has elected comparative evaluation.

Another efficient mechanism for contention resolution will result in other cases. If a comparative evaluation occurs but does not produce a clear winner, the efficient mechanism will then result.

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

**Contract Execution and Post-Delegation** – A community-based gTLD applicant will be subject to certain post-delegation contractual obligations to operate the gTLD in a manner consistent with the restrictions associated with its community-based designation, once it begins operating the gTLD. ICANN must approve material changes to the community-based nature of the gTLD and any associated contract changes.

### 1.2.2.3 Changes to Application Designation

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

### 1.2.3 Required Documents

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

1. **Proof of legal establishment** – Examples of acceptable documentation include articles or a certificate of incorporation, articles of association or equivalent documents relative to the type of entity and the jurisdiction in which it is formed, such as statutes or membership agreements of the entity.
2. **Proof of good standing** – Examples of acceptable documentation include a certificate of good standing or other equivalent official document issued by a competent government authority, if offered by a governmental authority for the jurisdiction.

Under some laws or jurisdictions, it may be possible to prove both establishment and good standing with a single document. That is, the same document may suffice for items 1 and 2.

If no such certificates or documents are available in the applicant's jurisdiction, an affidavit drafted and signed by a notary public or a legal practitioner duly qualified to represent clients before the courts of the country in which the applicant's organization is established, declaring that the organization is established and in good standing, must be submitted.

3. If the applicant is a government body or organization, it must provide a **certified copy of the act** wherein or governmental decision whereby the government body or organization was established.

ICANN is aware that practices and documentation standards vary from region to region, and has attempted to account for a variety of these practices when specifying the requirements. Applicants with exceptional circumstances should contact ICANN to determine how to provide appropriate documentation.

4. **Financial statements.** Applicants must provide audited financial statements for the most recently completed fiscal year for the applicant, and unaudited financial statements for the most recently ended interim financial period for the applicant.
5. Before delegation: **documentary evidence of ability to fund ongoing basic registry operations** for then-existing registrants for a period of three to five years in the event of registry failure, default or until a successor operator can be designated.

All documents must be valid at the time of submission.

Supporting documentation should be submitted in the original language. English translations are not required.

Some supporting documentation will be required only in certain cases:

1. **Community endorsement** – If an applicant has designated its application as community-based, it will be asked to submit a written endorsement of its application by an established institution representing the community it has named.
2. **Government support or non-objection** – If an applicant has applied for a string that is a geographical term, the

applicant is required to submit a statement of support or non-objection for its application from the relevant government(s) or public authorities. Refer to Section 2.1.1.4 for more information on the requirements for geographical names.

3. **Documentation of outside funding commitments** – If an applicant lists outside sources of funding in its application, it must provide evidence of commitment by the party committing the funds.

#### **1.2.4 Notice Concerning Technical Acceptance Issues with New gTLDs**

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All applicants should be aware that acceptance of their applications by ICANN and entering into a registry agreement with ICANN does not guarantee that the new gTLD will immediately function throughout the Internet. Past experience indicates that ISPs and webhosters do not automatically allow passage of or access to new gTLD strings even when these strings are authorized by ICANN, since software modifications may be required that may not happen until there is a business case for doing so.

Similarly, web applications often validate namestrings on data entry and may filter out new or unknown strings. ICANN has no authority or ability to require acceptance of new gTLD namestrings although it does prominently publicize ICANN-authorized gTLD strings on its website. ICANN encourages applicants to familiarize themselves with these issues and account for them in startup and launch plans. Successful applicants may find themselves expending considerable efforts post-implementation in working with providers to achieve acceptance of their new gTLD namestring.

Applicants should review (Informational) RFC 3696 (see <http://www.ietf.org/rfc/rfc3696.txt?number=3696>) for background. IDN applicants should review the material concerning experiences with IDN test strings in the root zone (see <http://idn.icann.org/>).

#### **1.2.5 Terms and Conditions**

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

### 1.3 Information for Internationalized Domain Name Applicants

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Some applied-for gTLD strings are expected to be Internationalized Domain Names (IDNs) that require the insertion of IDN-encoded A-labels into the DNS root zone. IDNs are labels that contain one or more letters or characters other than LDH (letters a,...z; digits 0,...9; and the hyphen "-").

If an applicant applies for such a string, it must provide accompanying information indicating compliance with the IDNA protocol and other requirements. The IDNA protocol is currently under revision and its documentation can be found at

<http://www.icann.org/en/topics/idn/rfcs.htm>. Applicants must provide applied-for gTLD strings in the form of both a **U-label** and an **A-label**.

An A-label is the ASCII-Compatible Encoding form of an IDNA-valid string. Every A-label begins with the IDNA ACE prefix, "xn--", followed by a string that is a valid output of the Punycode algorithm, and hence is a maximum of 59 ASCII characters in length. The prefix and string together must conform to all requirements for a label that can be stored in the DNS including conformance to the LDH (host name) rule described in RFC 1034, RFC 1123 and elsewhere.

A U-label is an IDNA-valid string of Unicode characters, including at least one non-ASCII character, expressed in a standard Unicode Encoding Form, normally UTF-8 in an Internet transmission context.

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

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

1. Short form of string (English). The applicant will provide a short description of what the string would mean in English.
2. Language of label (ISO 639-1). The applicant will specify the language of the applied-for TLD string, both

- according to the ISO's codes for the representation of names of languages, and in English.
3. Script of label (ISO 15924). The applicant will specify the script of the applied-for gTLD string, both according to the ISO code for the presentation of names of scripts, and in English.
  4. Unicode code points. The applicant will list all the code points contained in the U-label according to its Unicode form.
  5. Representation of label in phonetic alphabet. The applicant will provide its applied-for gTLD string notated according to the International Phonetic Alphabet (<http://www.arts.gla.ac.uk/IPA/ipachart.html>).
  6. Its IDN table. This table provides the list of characters eligible for registration in domain names according to registry policy. It will contain any multiple characters that can be considered "the same" for the purposes of registrations at the second level. For examples, see <http://iana.org/domains/idn-tables/>.
  7. Applicants must further demonstrate that they have made reasonable efforts to ensure that the encoded IDN string does not cause any rendering or operational problems. For example, problems have been identified in strings with characters of mixed right-to-left and left-to-right directionality when numerals are adjacent to the path separator. If an applicant were applying for a string with known issues, it should document steps that will be taken to mitigate these issues in applications.

## *1.4 Submitting an Application*

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Applicants may complete the application form and submit supporting documents using ICANN's TLD Application System (TAS). To access the tool, applicants must first register as a TAS user, which involves paying a user registration fee of USD100.

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

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

### ***1.4.1 Accessing the TLD Application System***

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The TAS site is located at [URL to be inserted in final version of RFP].

TAS features include:

#### ***1.4.1.1 Sub-user Management***

This feature allows applicants to create sub-users with varying permission levels to assist in completing the application. For example, if an applicant wishes to designate a user to complete the technical section of the application, the applicant can create a sub-user account with access only to that section.

#### ***1.4.1.2 Workflow Management***

This feature allows applicants to check the status of their applications through TAS.

#### ***1.4.1.3 Security***

ICANN uses all reasonable efforts to protect applicant information submitted through TAS. TAS uses advanced Internet security technology to protect applicant information against unauthorized access. This technology includes:

***Secure Socket Layer (SSL)*** – To ensure that confidential information remains confidential, it is sent to TAS in a secure session using SSL technology. SSL technology scrambles or encrypts information as it moves between the user's browser and TAS.

***Limited TAS Authorized Users and Permission Levels*** – TAS is a hierarchical system with defined user roles and permissions. ICANN-authorized personnel have access only to the portions of the system they need. For example, an accounting user may only need access to perform updates to the portion of a record indicating whether an applicant's evaluation fee has been received.

Although ICANN intends to follow the security precautions outlined here, it offers no assurances that these procedures will keep an applicant's data confidential and secure from access by unauthorized third parties.

### ***1.4.2 Technical Support***

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TAS users can refer to the FAQ/knowledge base or contact [email address to be inserted in final version of RFP] for help using the system. Users can expect to receive a tracking

ticket number and a response within 24 to 48 hours through the TAS submission tool.

### ***1.4.3 Backup Application Process***

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

## ***1.5 Fees and Payments***

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

### ***1.5.1 Breakdown of Fees and Amounts***

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The following fees are required from all applicants:

- ***TAS User Registration Fee*** – USD 100. This fee enables a user to enter the online application system. This fee is nonrefundable.
- ***gTLD Evaluation fee*** – USD 185,000. ICANN will not begin its evaluation of an application unless it has received the gTLD evaluation fee by the due date. Refer to subsection 1.5.4. The gTLD evaluation fee is set to recover costs associated with the new gTLD program. The fee is set to ensure that the program is fully funded, and doesn't take resources from other ICANN funding sources, including generic registries and registrars, cc TLD contributions and RIR contributions.

In certain cases, refunds of a portion of this fee may be available for applications that are withdrawn before the evaluation process is complete. The amount of refund will depend on the point in the process at which the withdrawal is made. (Refer to subsection 1.5.5.) Details will be made available when the application process is launched.

Applicants may be required to pay additional fees in certain cases. Those possible additional fees include:

- ***Registry Services Review Fee*** – If applicable, this fee is payable for additional costs incurred in referring an application to the RSTEP for an extended review. Applicants will be notified if such a fee is due. The fee for a three member RSTEP review team is anticipated to be USD 50,000. In some cases, five-member panels might be required, or there might be increased scrutiny at a greater cost. In every case, the applicant will be advised of the review

cost before its initiation. Refer to Section 2.1.3 of Module 2 on Registry Services review.

- **Dispute Resolution Filing Fee** – This amount must accompany any filing of a formal objection and any response that an applicant files to an objection. This fee is payable to the applicable dispute resolution service provider in accordance with the provider’s payment instructions. ICANN estimates that non-refundable filing fees could range from approximately USD 1,000 to USD 5,000 (or more) per party per proceeding. Refer to the appropriate provider for the relevant amount. Refer to Module 3 for dispute resolution procedures.
- **Dispute Resolution Adjudication Fee** – This fee is payable to the applicable dispute resolution service provider in accordance with that provider’s procedures and schedule of costs. Both parties in the dispute resolution proceeding will be required to submit an advance payment of costs in an estimated amount to cover the entire cost of the proceeding. This may be either an hourly fee based on the estimated number of hours the panelists will spend on the case (including review of submissions, facilitation of a hearing, if allowed, and preparation of a decision), or a fixed amount. The prevailing party in a dispute resolution proceeding will have its advance payment refunded, while the non-prevailing party will not receive a refund and thus will bear the cost of the proceeding.

ICANN estimates that a proceeding involving a fixed amount could range from USD 2,000 to USD 8,000 (or more) per proceeding. ICANN further estimates that an hourly rate based proceeding with a one-member panel could range from USD 32,000 to USD 56,000 (or more) and with a three-member panel it could range from USD 70,000 to USD 122,000 (or more). These estimates may be lower if the panel does not call for written submissions beyond the objection and response, and does not allow a hearing. Please refer to the appropriate provider for the relevant amounts or fee structures. Refer also to Section 3.2 of Module 3 for further details.

- **Comparative Evaluation Fee** – This fee is payable to the provider appointed to handle comparative evaluations, in the event that the applicant participates in a comparative evaluation.

Applicants will be notified if such a fee is due. Refer to Section 4.2 of Module 4.

This list does not include fees (that is, registry fees) that will be payable to ICANN following execution of a registry agreement. See <http://www.icann.org/en/topics/new-gtld-draft-agreement-24oct08-en.pdf>.

## 1.5.2 *Payment Methods*

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Payments to ICANN may be submitted by wire transfer, ACH, money order, or check.

### 1.5.2.1 *Wire Transfer Payment*

Instructions for making a payment by **wire transfer** will be available in TAS.

### 1.5.2.2 *ACH Payment*

Instructions for making **ACH payments** will be available in TAS.

### 1.5.2.3 *Credit Card Payment*

To make a **credit card payment**, note:

ICANN accepts Visa, MasterCard/Maestro, American Express and Discover credit cards as forms of payment. The maximum amount accepted is USD 20,000 per invoice.

- Fill out and sign the Credit Card Payment Form at <http://www.icann.org/en/financials/credit.pdf>.
- Send the completed form to ICANN at fax:  
+1.310.823.8649

Or mail the form to:

Internet Corporation for Assigned Names and Numbers  
(ICANN)  
Attention: Finance Department  
4676 Admiralty Way, Suite 330  
Marina del Rey, CA 90292-6601 USA

### 1.5.2.4 *Check or Money Order Payment*

To make a **payment by check or money order** (USD only), mail or deliver by private carrier to:

Internet Corporation for Assigned Names and Numbers  
(ICANN)  
Attention: Finance Department  
4676 Admiralty Way, Suite 330  
Marina del Rey, CA 90292-6601 USA

### *1.5.3 Requesting an Invoice*

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

### *1.5.4 Deadlines for Payments*

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The Evaluation Fee must be received by [time] UTC [date].

ICANN or its providers will notify the applicants of due dates for payment in respect of additional fees (if applicable).

### *1.5.5 Withdrawals and Refunds*

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Refunds may be available to applicants who choose to withdraw at certain stages of the process.

An applicant that wishes to withdraw an application must use the TAS interface to request a refund. ICANN will not consider any other form of request for refunds. Refunds will only be issued to the organization that submitted the original payment. All refunds are paid by wire transfer. Any bank transfer or transaction fees incurred by ICANN will be deducted from the amount paid.

Further details on refund amounts will be available in the final version of the RFP.

## *1.6 Questions about this RFP*

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Applicants may submit questions about completing the application form to [email address to be inserted in final version of RFP]. To provide all applicants equitable access to information, ICANN will post all questions and answers in a centralized location on its website.

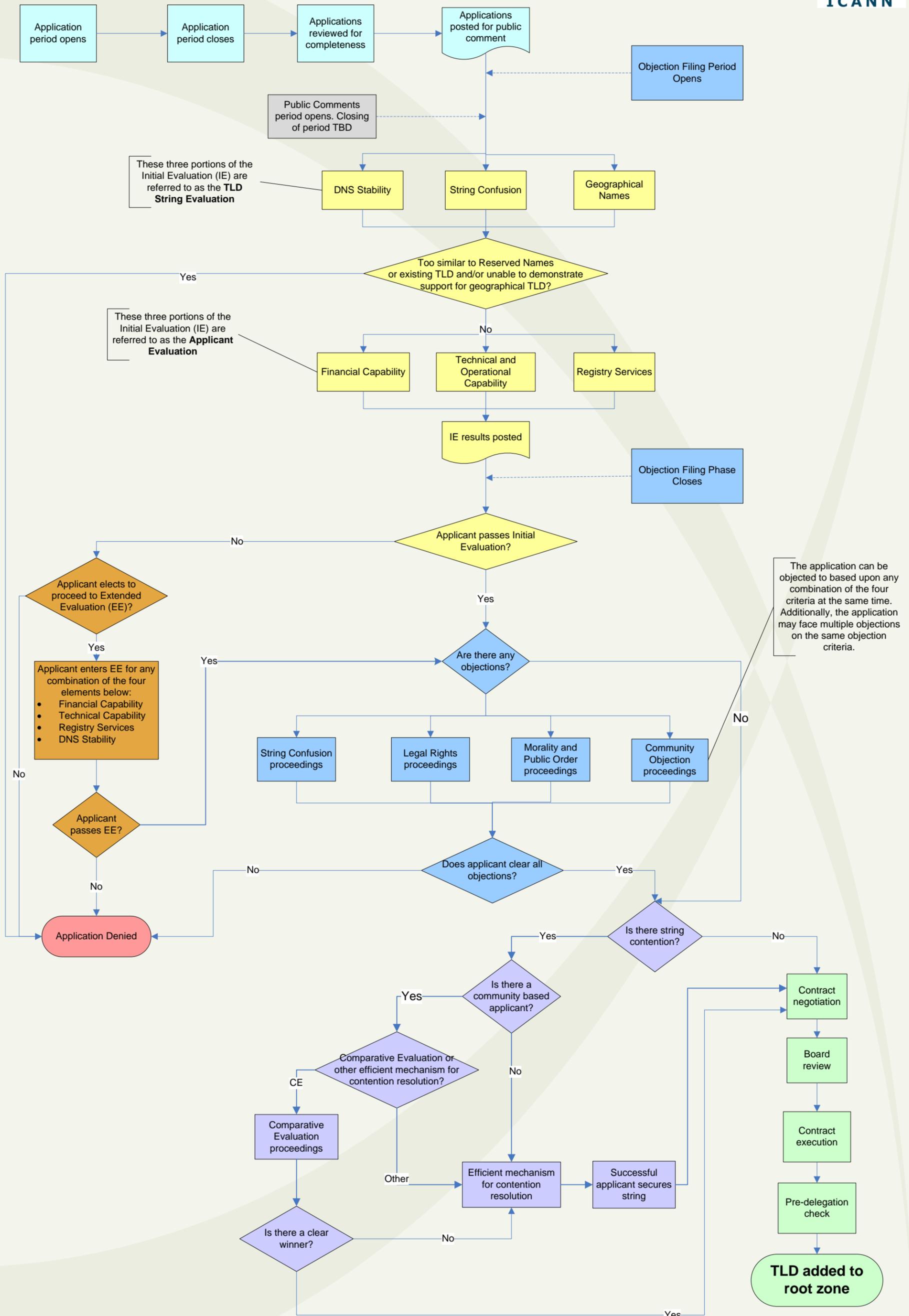
All requests to ICANN for information about the process or issues surrounding preparation of an application must be submitted in writing to the designated email address. ICANN will not grant requests from applicants for personal or telephone consultations regarding the preparation of an application. Applicants that contact ICANN for clarification about aspects of the application will be referred to the dedicated online question and answer area.

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



# New gTLD Program - Evaluation Process

## DRAFT- For Discussion Purposes



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



# Draft Applicant Guidebook

## Module 2

Please note that this is a discussion draft only. Potential applicants should not rely on any of the proposed details of the new gTLD program as the program remains subject to further consultation and revision.

24 October 2008

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# Module 2

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## *Evaluation Procedures*

This module describes the evaluation procedures and criteria used to determine whether applications are approved for delegation as a gTLD. All applicants will undergo an Initial Evaluation and those that do not pass all phases may enter into an Extended Evaluation.

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

The following elements make up **Initial Evaluation**:

- String Reviews
  - String confusion
  - Reserved Names
  - DNS stability
  - Geographical names
- Applicant Reviews
  - Demonstration of technical and operational capability
  - Demonstration of financial capability
  - Registry services

These elements, which are described in greater detail later in this module, are intended to ensure applied-for gTLD strings do not negatively impact DNS security or stability, and to ensure that applicants are capable of operating the gTLD in a stable and secure manner, and that new services can be introduced without adverse effect on the security or stability of the DNS.

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

**Extended Evaluation** may be applicable in cases in which an applicant does not pass the Initial Evaluation or additional inquiry is required.

## 2.1 Initial Evaluation

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

The first examination focuses on the applied for string to test:

- Whether the applied-for gTLD string is similar to others and would cause user confusion;
- Whether the applied-for gTLD string might disrupt DNS security or stability; and
- Whether requisite government approval is given in the case of certain geographical names.

The second examination focuses on the applicant to test:

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

### 2.1.1 String Reviews

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In the Initial Evaluation, ICANN reviews every applied-for gTLD string for string confusion, potential to introduce instability into the DNS, and whether relevant government approval is required. Those reviews are described in greater detail in the following paragraphs.

#### 2.1.1.1 String Confusion Review

The objective of this review is to prevent user confusion and loss of confidence in the DNS. This review involves a comparison of each applied-for gTLD string against existing TLDs and against other applied-for gTLD strings. The examination is to determine whether the applied-for gTLD string is so similar to one of the others that it would create a probability of detrimental user confusion if it were to be delegated to the root zone. ICANN will perform determinations of string similarity in accordance with the steps outlined here.

The similarity review will be conducted by a panel of String Similarity Examiners. This examination will be informed by an algorithmic score for the visual similarity between each applied-for string and each of other existing and applied-for TLDs. The score will provide one objective measure for consideration by the panel.

The examiners' task is to identify string similarities that would create a probability of detrimental user confusion. The examiners will use a common standard to test for whether string confusion exists, as follows:

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

The standard will be applied in two sets of circumstances, when comparing:

- Applied-for gTLD strings against existing TLDs and reserved names.
- Applied-for gTLD strings against other applied for gTLD strings or strings requested in ccTLD processes).

**Existing String Similarity Examination** – This review involves cross-checking between each applied-for string and the list of existing TLD strings to determine whether the two strings are so similar to one another that they create a probability of detrimental user confusion.

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

An application that fails the string confusion review and is found too similar to an existing string will not pass the Initial Evaluation, and no further reviews will be available.

In the simple case in which an applied-for TLD string is identical to an existing TLD, the application system will recognize the existing TLD and not allow the application to be submitted.

Such testing for identical strings also takes into consideration the code point variants listed in any relevant language reference table.

For example, protocols treat equivalent labels as alternative forms of the same label, just as "foo" and "Foo" are treated as alternate forms of the same label (RFC 3490).

An applied-for gTLD string that passes the string confusion review is still subject to challenge by an existing TLD operator or by another gTLD applicant in the current

application round. That process requires that a specific objection be filed by an objector having the standing to make such an objection. Refer to Module 3, Dispute Resolution Procedures, for more information about the objection process.

***String Contention Sets: Similarity with Other Applied-for gTLD Strings*** – All applied-for gTLD strings will be reviewed against one another to identify any strings that are so similar that they create a probability of detrimental user confusion would result if more than one is delegated into the root zone. In performing the string confusion review, the panel of String Similarity Examiners will create contention sets that may be used later in the process. A contention set contains at least two applied-for strings identical to one another or so similar that string confusion would result if more than one were delegated into the root zone. Refer to Module 4, String Contention Procedures, for more information on contention sets and contention resolution. ICANN will notify applicants who are part of a contention set by the conclusion of the Initial Evaluation period. These contention sets will also be published on ICANN’s website.

***Similarity to TLD strings applied for as ccTLDs*** -- Applied-for gTLD strings will also be reviewed for similarity to TLD strings applied for in the IDN ccTLD Fast Track process (see <http://www.icann.org/en/topics/idn/fast-track/>). Should conflict with a prospective fast-track IDN ccTLD be identified, ICANN will take steps to resolve the conflict. (See process for Geographical Names in paragraph 2.1.1.4.)

***String Similarity Algorithm*** – The String Similarity Algorithm (Algorithm) is a tool the examiners use to provide one objective measure as part of the process of identifying strings likely to result in confusion. The Algorithm is also available to applicants for testing and informational purposes. The Algorithm and user guidelines are available at <http://80.124.160.66/icann-algorithm>.

The Algorithm calculates scores for visual similarity between any two strings, using factors such as letters in sequence, number of similar letters, number of dissimilar letters, common prefixes, common suffixes, and string length.

#### ***2.1.1.2 Review for Reserved Names***

The Reserved Names review involves comparison with the list of top-level Reserved Names to ensure that the applied-for gTLD string does not appear on that list.

**Top-Level Reserved Names List**

<i>AFRINIC</i>	<i>IANA-SERVERS</i>	<i>NRO</i>
<i>ALAC</i>	<i>ICANN</i>	<i>RFC-EDITOR</i>
<i>APNIC</i>	<i>IESG</i>	<i>RIPE</i>
<i>ARIN</i>	<i>IETF</i>	<i>ROOT-SERVERS</i>
<i>ASO</i>	<i>INTERNIC</i>	<i>RSSAC</i>
<i>CCNSO</i>	<i>INVALID</i>	<i>SSAC</i>
<i>EXAMPLE*</i>	<i>IRTF</i>	<i>TEST*</i>
<i>GAC</i>	<i>ISTF</i>	<i>TLD</i>
<i>GNSO</i>	<i>LACNIC</i>	<i>WHOIS</i>
<i>GTLD-SERVERS</i>	<i>LOCAL</i>	<i>WWW</i>
<i>IAB</i>	<i>LOCALHOST</i>	
<i>IANA</i>	<i>NIC</i>	
*Note that in addition to the above strings, ICANN will also reserve translations of the terms "test" and "example" in multiple languages.		

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

In addition, applied-for gTLD strings are reviewed in a process identical to that described in the preceding section to determine whether they exceed a similarity threshold with a Reserved Name. An application for a gTLD string that is identified as too similar to a Reserved Name will not pass the Reserved Names review.

**2.1.1.3 Review for Potential DNS Instability**

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

**2.1.1.3.1 String Stability Review**

New gTLD labels must not adversely affect on the security or stability of the DNS. Although no string complying with the requirements in paragraph 2.1.1.3.2 of this module is expected to adversely affect DNS security or stability, an extended review is possible if technical reviewers identify an issue with the applied-for gTLD string that requires further investigation.

***String Stability Review Procedure*** – During the Initial Evaluation period, ICANN will conduct a preliminary review on the set of applied-for gTLD strings to ensure that proposed strings comply with relevant standards provided in the preceding section and determine whether any strings raise significant technical stability issues that may require an Extended Evaluation.

There is low probability that this review will be necessary for a string that fully complies with the string requirements in paragraph 2.1.1.3.2 of this module. However, the technical stability review process provides an additional safeguard if unanticipated security or stability issues arise concerning an applied-for gTLD string.

See Section 2.2 for further information on the Extended Evaluation process.

#### ***2.1.1.3.2 String Requirements***

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

If an applied-for gTLD string is found to violate any of these rules, the application will be denied. No further reviews are available.

***Technical Requirements for all Labels (Strings)*** – The technical requirements for the selection of top-level domain labels follow.

- The ASCII label (that is, the label as transmitted on the wire) must be valid as specified in the technical standards *Domain Names: Implementation and Specification* (RFC 1035), and *Clarifications to the DNS Specification* (RFC 2181). This includes the following:
  - The label must have no more than 63 characters.
  - Upper and lower case characters are treated as identical.
- The ASCII label must be a valid host name, as specified in the technical standards *DOD Internet Host Table Specification* (RFC 952), *Requirements for Internet Hosts — Application and Support* (RFC 1123), and *Application Techniques for Checking and Transformation of Names* (RFC 3696). This includes the following:

- The label must consist entirely of letters, digits and hyphens.
- The label must not start or end with a hyphen.
- There must be no possibility for confusing an ASCII label for an IP address or other numerical identifier by application software. For example, representations such as "255", "o377" or "0xff" representing decimal, octal, and hexadecimal strings, can be confused for IP addresses. As such, labels:
  - Must not be wholly composed of digits between "0" and "9".
  - Must not commence with "0x" or "x", and have the remainder of the label wholly composed of hexadecimal digits, "0" to "9" and "a" through "f".
  - Must not commence with "0o" or "o", and have the remainder of the label wholly composed of digits between "0" and "7".
- The ASCII label may only include hyphens in the third and fourth position if it represents a valid Internationalized Domain Name in its A-label form (ASCII encoding).
- The presentation format of the domain (that is, either the label for ASCII domains, or the U-label for Internationalized Domain Names) must not begin or end with a digit.

***Requirements for Internationalized Domain Names*** – These requirements apply only to prospective top-level domains that use non-ASCII characters. Applicants for these internationalized top-level domain labels are expected to be familiar with the IETF IDNA standards, Unicode standards, and the terminology associated with Internationalized Domain Names.

- The label must be a valid internationalized domain name, as specified in the technical standard *Internationalizing Domain Names in Applications* (RFC 3490). This includes the following nonexhaustive list of limitations:
  - Must only contain Unicode code points that are defined as "Valid" in *The Unicode Codepoints and IDNA* (<http://www.ietf.org/internet->

[drafts/draft-ietf-idnabis-tables-02.txt](#)) and be accompanied by unambiguous contextual rules where necessary.

- Must be fully compliant with Normalization Form C, as described in *Unicode Standard Annex #15: Unicode Normalization Forms*. See also examples in <http://unicode.org/faq/normalization.html>.
- Must consist entirely of characters with the same directional property.
- The label must meet the relevant criteria of the ICANN *Guidelines for the Implementation of Internationalised Domain Names*. See <http://www.icann.org/en/topics/idn/implementation-guidelines.htm>. This includes the following nonexhaustive list of limitations:
  - All code points in a single label must be taken from the same script as determined by the Unicode Standard Annex #24: Unicode Script Property.
  - Exceptions are permissible for languages with established orthographies and conventions that require the commingled use of multiple scripts. However, even with this exception, visually confusable characters from different scripts will not be allowed to co-exist in a single set of permissible code points unless a corresponding policy and character table is clearly defined.

The IDNA protocol used for internationalized labels is currently under revision through the Internet standardization process. As such, additional requirements may be specified that need to be adhered to as this revision is being completed. The current status of the protocol revision is documented at <http://tools.ietf.org/wg/idnabis>.

***Policy Requirements for Generic Top-Level Domains –***  
Applied-for strings must be composed of three or more visually distinct letters or characters in the script, as appropriate.

#### ***2.1.1.4 Geographical Names***

ICANN will review all applied-for strings to ensure that appropriate consideration is given to the interests of governments or public authorities in country or territory

names, as well as certain other types of sub-national place names. The requirements and procedure ICANN will follow is described in the following paragraphs.

#### 2.1.1.4.1 *Requirements for Strings Intended to Represent Geographical Entities*

The following types of applications must be accompanied by documents of support or non-objection from the relevant government(s) or public authority(ies).

- Applications for any string that is a meaningful representation of a *country or territory name* listed in the ISO 3166-1 standard (see [http://www.iso.org/iso/country\\_codes/iso\\_3166\\_data\\_bases.htm](http://www.iso.org/iso/country_codes/iso_3166_data_bases.htm)). This includes a representation of the country or territory name in any of the six official United Nations languages (French, Spanish, Chinese, Arabic, Russian and English) and the country or territory's local language.
- Applications for any string that represents a *sub-national place name*, such as a county, province, or state, listed in the ISO 3166-2 standard.
- Applications for a city name, where the applicant clearly intends to use the gTLD to leverage from the city name.
- An application for a string which represents a continent or UN region appearing on the

Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings list at <http://unstats.un.org/unsd/methods/m49/m49regin.htm>.

An applied-for gTLD string that falls into the above categories is considered to represent a geographical name. It is the applicant's responsibility to identify whether its applied-for gTLD string falls into the above categories and to determine the relevant government or governments, or the relevant public authority or authorities. In the case of an application for a string which represents a continent or UN region, evidence of support, or non-objection, will be required from a substantial number of the relevant governments and/or public authorities associated with the continent or the UN region.

The evidence of support or non-objection from the relevant government or public authority should include a signed

letter of support or non-objection from the minister with the portfolio responsible for domain name administration, ICT, foreign affairs or the Office of the Prime Minister or President of the relevant jurisdiction. If there are reasons for doubt about the authenticity of the communication, ICANN will consult with the diplomatic authorities or members of ICANN's Governmental Advisory Committee for the government or public authority concerned on the competent authority and appropriate point of contact with their administration for communications.

The letter must clearly express the government's or public authority's support or non-objection for the applicant's application and demonstrate the government's or public authority's understanding of the string being requested and what it will be used for.

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

#### *2.1.1.4.2 Review Procedure for Geographical Names*

A Geographical Names Panel (GNP) will be established to evaluate applications and confirm whether each string represents a geographic term, and to verify the authenticity of the supporting documentation where necessary. The Geographic Names Panel may consult with additional experts as they consider appropriate.

The steps ICANN and the Geographical Names Panel intend to follow to ensure compliance with these requirements are described here.

1. During the Initial Evaluation period, ICANN evaluates each application for a geographical name to confirm that the applicant has provided a letter of support or nonobjection from the relevant government.
2. ICANN forwards applications considered complete to the GNP for confirmation that:
  - The strings are a meaningful representation of a country or territory name or a subnational place name, and

- The communication from the government or public authority is legitimate and contains the suggested content.
3. The GNP also reviews applications that are not self-identified as a geographical name to ensure that the applied-for string is not a meaningful representation of a country or territory name or a sub-national place name.
  4. All applications determined to be geographical but without necessary supporting documents will be considered incomplete. The applicant will be notified and the application will not pass Initial Evaluation.
  5. The GNP may consult additional expertise if uncertainty arises about the name the applied-for gTLD string is claimed to represent.

The results of the evaluation will be publicly posted on ICANN's website at the conclusion of the Initial Evaluation, and will also be available to applicants.

If there is more than one application for a string representing a certain geographical term as described in this section, and the applications are considered complete (that is, have requisite government approvals), the applications will be suspended pending resolution by the applicants. If there is contention between identical (or similar) applicants where one is identified as a geographical name, the string contention will be settled using the string contention methodology described in Module 4.

### *2.1.2 Applicant Reviews*

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Concurrent with the applied-for gTLD string reviews described in subsection 2.1.1, ICANN will review the applicant's technical and operational capability, its financial capability, and its proposed registry services. Those reviews are described in greater detail in the following subsections.

#### *2.1.2.1 Information Sought*

The questions provided for applicants in the application form are available at <http://www.icann.org/en/topics/new-gtld-draft-evaluation-criteria-24oct08-en.pdf>. Applicants answer questions which cover the following three areas in relation to themselves: general information, technical and operational capability, and financial capability.

Applicants should be aware that the application materials submitted in the online application system, as well as any evaluation materials and correspondence, will be publicly posted on ICANN's website. The sections in the application that are marked CONFIDENTIAL will not be posted. Any sections of the application that ICANN has not designated CONFIDENTIAL will be posted.

The applicant questions cover the following three areas:

**General Information** – These questions are intended to gather information about an applicant's legal identity, contact information, and applied-for gTLD string. Failure to provide any of this information will result in an application being considered incomplete. Under specific areas of questions under this category are: the identification of the applied-for string; selection of TLD type; and requests for certain documents.

**Demonstration of Technical and Operational Capability** – These questions are intended to gather information about an applicant's technical capabilities and plans for operation of the proposed gTLD.

Applicants are not required to have deployed an actual registry to complete the requirements for a successful application. It will be sufficient at application time for an applicant to demonstrate a clear understanding and accomplishment of some groundwork toward the key technical and operational aspects of running a gTLD registry. Each applicant that passes the technical evaluation and all other steps will be required, following execution of a registry agreement, to complete a pre-delegation technical test before delegation of the applied-for gTLD. Refer to Module 5, Transition to Delegation, for additional information.

**Demonstration of Financial Capability** – These questions are intended to gather information about an applicant's financial capabilities to operate a gTLD registry business and its financial planning in preparation for long-term operation of a new gTLD.

#### 2.1.2.2 Evaluation Methodology

Initial Evaluations are conducted on the basis of the information each applicant makes available to ICANN in its response to the questions in the application form. ICANN and its evaluators are not obliged to take into account any information or evidence that is not made available in the application and submitted by the due date, unless explicitly requested by the evaluators.

Evaluators are entitled, but not obliged, to request further information or evidence from an applicant, and any such request will be made solely through TAS, rather than by direct means such as phone, letter, email, or other similar means. Only one exchange of information between the applicant and the evaluators may take place within the Initial Evaluation period.

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

### *2.1.3 Registry Services Review*

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Concurrent with the string reviews described in subsection 2.1.1, ICANN will review the applicant's proposed registry services. The applicant will be required to provide a list of proposed registry services in its application.

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

A full definition of registry service can be found at <http://www.icann.org/en/registries/rsep/rsep.html> and in the draft registry agreement at <http://www.icann.org/en/topics/new-gtld-draft-agreement-24oct08-en.pdf>. Registry services will be examined to determine if the proposed registry service might raise significant stability or security issues. Examples of services submitted to the registry services process by established registries can be found at <http://www.icann.org/en/registries/rsep>.

The registration of domain names, for example, is a registry service. Lists of registry services currently provided by

registries can be found in registry agreement appendices. In general cases, these services successfully pass this inquiry. See

<http://www.icann.org/en/registries/agreements.htm>.

Review of all applicants' proposed registry services will occur during the Initial Evaluation.

**Procedure** – ICANN's first review will be a preliminary determination of whether a proposed registry service requires further consideration based on whether the registry service may raise significant security or stability issues.

If ICANN's preliminary determination reveals that there may be significant security or stability issues surrounding the proposed service, the application will be flagged for an extended review by the RSTEP (see <http://www.icann.org/en/registries/rsep/rstep.html>). This review will occur during the Extended Evaluation phase (refer to section 2.2).

Definitions for security and stability applied in the registry services review are:

**Security** – an effect on security by the proposed registry service means (1) the unauthorized disclosure, alteration, insertion or destruction of registry data, or (2) the unauthorized access to or disclosure of information or resources on the Internet by systems operating in accordance with all applicable standards.

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

#### ***2.1.4 Applicant's Withdrawal of an Application***

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An applicant who does not pass the Initial Evaluation may be permitted to withdraw its application at this stage for a partial refund (refer to subsection 1.5.5 of Module 1, Introduction to gTLD Application Process).

## 2.2 *Extended Evaluation*

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

- Demonstration of technical and operational capability (refer to paragraph 2.1.2.1).
- Demonstration of financial capability (refer to paragraph 2.1.2.1).

An Extended Evaluation may also result if ICANN identifies a need for further review on the following elements:

- DNS stability (refer to paragraph 2.1.1.3).
- Registry services (refer to subsection 2.1.3). Note that this investigation incurs an additional fee (the Registry Services Review Fee) if the applicant wishes to proceed. See Section 1.5 of Module 1 for fee and payment information.

From the time an applicant receives notice of failure to pass the Initial Evaluation, it has 15 calendar days to submit to ICANN the Notice of Request for Extended Evaluation through the online application interface. If the applicant does not explicitly request the Extended Evaluation, and pay any additional fees as applicable, the application will not proceed.

### 2.2.1 *Technical and Operational or Financial Extended Evaluation*

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This subsection applies to an Extended Evaluation of an applicant's technical and operational capability or financial capability, as described in paragraph 2.1.2.1.

The Extended Evaluation allows one additional round of inquiry and answer between the evaluators and the applicant to clarify information contained in the application. This supplemental information will become part of the application. Applicants may not change the information submitted in their original applications. Through the online system, the evaluators will provide the applicant a set of questions describing any deficiencies in the application and request clarification. Such communications will include a deadline for the applicant to respond.

The same panel that reviewed an application during Initial Evaluation will conduct the Extended Evaluation, using the

same criteria as outlined at <http://www.icann.org/en/topics/new-gtld-draft-evaluation-criteria-24oct08-en.pdf>, to determine whether the application, now that certain information has been clarified, meets the criteria.

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

### *2.2.2 String Stability Extended Evaluation*

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This section applies to an Extended Evaluation of DNS security or stability issues with an applied-for gTLD string, as described in paragraph 2.1.1.3.

If the evaluators determine that a string poses stability issues that require further investigation, the applicant must either confirm that it intends to move forward with the application process or withdraw its application.

If an application is subject to such an Extended Evaluation, an independent 3-member panel will be formed to review the security or stability issues identified during the Initial Evaluation.

The panel will review the string and determine whether the string complies with relevant standards or creates a condition that adversely affects the throughput, response time, consistency, or coherence of responses to Internet servers or end systems, and will communicate its findings to ICANN and to the applicant.

If the panel determines that the string does not comply with relevant standards or creates a condition that adversely affects the throughput, response time, consistency, or coherence of responses to Internet servers or end systems, the application cannot proceed.

### *2.2.3 Registry Services Extended Evaluation*

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This section applies to an Extended Evaluation of Registry Services, as described in subsection 2.1.3.

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

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

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

If the RSTEP finds that one or more of the applicant's proposed registry services may be introduced without risk of a meaningful adverse effect on security or stability, these services may be included in the applicant's contract with ICANN.

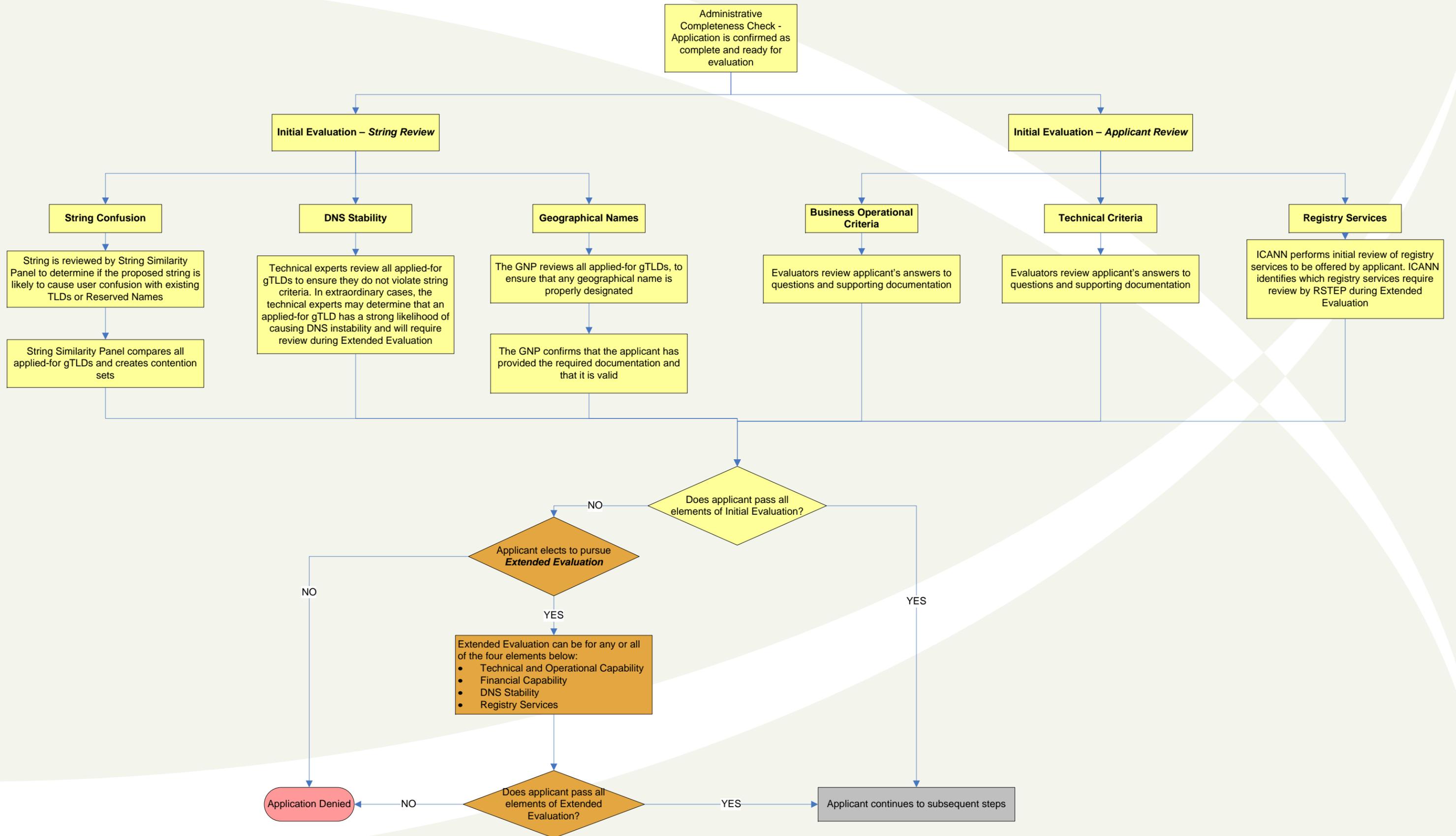
If the RSTEP finds that the proposed service would create a risk of a meaningful adverse effect on security or stability, the applicant may elect to proceed with its application without the proposed service, or withdraw its application for the gTLD.

### **2.3** *Probity and Conflicts of Interest*

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ICANN staff and by various independent service providers will review all applications during **Initial Evaluation** and **Extended Evaluation**. During this entire evaluation process, applicants must not approach, or have any other person or entity approach on their behalf, any ICANN staff member, any ICANN Board member, or any person associated with the evaluation process, including any evaluators, experts, examiners, or reviewers retained by ICANN.

# DRAFT - New gTLD Program – Initial Evaluation and Extended Evaluation





# Draft Applicant Guidebook

## Module 3

Please note that this is a discussion draft only. Potential applicants should not rely on any of the proposed details of the new gTLD program as the program remains subject to further consultation and revision.

24 October 2008

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# Module 3

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## *Dispute Resolution Procedures*

This module describes the purpose of the objection and dispute resolution mechanisms, the grounds for lodging an objection to a gTLD application, the general procedures for filing or responding to an objection, and the manner in which dispute resolution proceedings are conducted.

This module also discusses the guiding principles, or standards, that each DRSP will apply in its decisions.

All applicants should be aware of the possibility that an objection may be filed against their applications, and of the options available in the event of such an objection.

### *3.1 Purpose and Overview of the Dispute Resolution Process*

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The independent dispute resolution process is designed to protect certain interests and rights. The process provides a path for formal objections during evaluation of the applications. It allows certain parties with standing to have their objections considered before a panel of qualified experts. A formal objection can be filed only on four enumerated grounds, as described in this module. A formal objection initiates a dispute resolution proceeding. In filing an application for a gTLD, the applicant agrees to accept this gTLD dispute resolution process. Similarly, an objector accepts the gTLD dispute resolution process by filing its objection.

#### *3.1.1 Grounds for Objection*

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An objection may be filed on any one of the following four grounds:

***String Confusion Objection*** – The applied-for gTLD string is confusingly similar to an existing TLD or to another applied-for gTLD string.

***Legal Rights Objection*** – The applied-for gTLD string infringes existing legal rights of the objector.

***Morality and Public Order Objection*** – The applied-for gTLD string is contrary to generally accepted legal norms of morality and public order that are recognized under international principles of law.

**Community Objection** – There is substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted.

The rationales for these grounds are discussed in the final report of the ICANN policy development process for new gTLDs. For more information on this process, see <http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-part-08aug07.htm>.

### 3.1.2 *Standing to Object*

Objectors must satisfy standing requirements to have their objections considered. As part of the dispute proceedings, all objections will be reviewed by panelists designated by the applicable Dispute Resolution Service Provider (DRSP) to determine whether the objector has standing to object. Standing requirements for the four objection grounds are:

Objection Ground	Who may object
String confusion	Existing TLD operator or gTLD applicant in current round
Legal rights	Rightsholders
Morality and Public Order	To be determined
Community	Established institution

#### 3.1.2.1 *String Confusion Objection*

Two types of entities have standing to object:

- An existing TLD operator may file a string confusion objection to assert string confusion between an applied-for gTLD and the TLD that it currently operates.
- Any gTLD applicant in this application round may also file a string confusion objection to assert string confusion between an applied-for gTLD and the gTLD for which it has applied.

In the case where a gTLD applicant successfully asserts string confusion with another applicant, the only possible outcome is for both applicants to be placed in a contention set and to be referred to a contention resolution procedure (refer to Module 4). If an objection by a gTLD applicant to another gTLD applicant is unsuccessful, the applicants may both move forward in the process without being considered in contention with one another.

### 3.1.2.2 *Legal Rights Objection*

Only a rightsholder has standing to file a legal rights objection. The source and documentation of the existing legal rights the objector is claiming are infringed by the applied-for gTLD must be included in the filing.

### 3.1.2.3 *Morality and Public Order Objection*

Standing requirements for morality and public order objections remain under study. In the case of morality and public order objections, it may be appropriate to grant standing only to parties who have recognized authority in the arena of morality or public order, such as governments, or it may be appropriate to make this option available to any interested parties who assert harm due to an applied-for gTLD string.

### 3.1.2.4 *Community Objection*

Established institutions associated with defined communities are eligible to file a community objection. To qualify for standing for a community objection, the objector must prove both of the following:

***It is an established institution*** – Factors that may be considered in making this determination include:

- Level of global recognition of the institution;
- Length of time the institution has been in existence; and
- Public historical evidence of its existence, such as the presence of formal charter or national or international registration, or validation by a government, inter-governmental organization, or treaty. The institution must not have been established solely in conjunction with the gTLD application process.

***It has an ongoing relationship with a defined community that consists of a restricted population*** – Factors that may be considered in making this determination include:

- The presence of mechanisms for participation in activities, membership, and leadership;
- Institutional purpose related to benefit of the associated community;
- Performance of regular activities that benefit the associated community; and
- The level of formal boundaries around the community.

### *3.1.3 Options in the Event of Objection*

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Applicants whose applications are the subject of an objection have the following options:

The applicant can file a response to the objection and enter the dispute resolution process (refer to subsection 3.3); or

The applicant can withdraw, in which case the objector will prevail by default and the application will not proceed further.

If for any reason the applicant does not file a response to an objection, the objector will prevail by default.

## *3.2 Procedure for Filing an Objection*

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To trigger a dispute resolution proceeding, an objection must be filed by the posted deadline date. Objections must be filed directly with the appropriate DRSP for each objection ground.

The **International Centre for Dispute Resolution** has agreed in principle to administer disputes brought pursuant to string confusion objections.

The **Arbitration and Mediation Center of the World Intellectual Property Organization** has agreed in principle to administer disputes brought pursuant to legal rights objections.

The **International Chamber of Commerce** has agreed in principle to administer disputes brought pursuant to Morality and Public Order and Community Objections.

### *3.2.1 Objection Filing Procedures*

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The procedures outlined in this subsection must be followed by any party wishing to file a formal objection to an application that has been posted by ICANN. These procedures are provided to applicants for reference and are intended to cover dispute resolution procedures generally. Each provider has its own rules and procedures that also must be followed when filing an objection.

Should an applicant wish to file a formal objection to another gTLD application, it would follow these procedures.

- All objections must be filed by the posted deadline date. Objections will not be accepted by the DRSPs after this date.

- All objections must be filed in English.
- Each objection must be filed separately. That is, if any objector wishes to object to several applications at the same time, the objector must file an objection and pay a filing fee for each application that is the subject of an objection. If an objector wishes to object to one application on different grounds, the objector must file an objection and pay a filing fee for each objection ground.
- All objections must be filed with the appropriate DRSP. If an objection is filed with a DRSP other than the DRSP specified for the objection ground, that DRSP will promptly notify the objector of the error. The objector then has 5 calendar days after receiving that notification to file its objection with the appropriate DRSP.
- Objections must be filed electronically and all interactions with the DRSPs during the objection process must be conducted online.

Each objection filed by an objector must include:

- The name and contact information, including address, phone, and email address, of all parties submitting an objection.
- The basis for standing; that is, why the objector believes it has the right to object.
- A statement of the nature of the dispute, which should include:
  - A statement giving the specific ground under which the objection is being filed.
  - A detailed explanation of how the objector's claim meets the requirements for filing a claim pursuant to that particular ground or standard.
  - A detailed explanation of the validity of the objection and why the application should be denied.
- Copies of any documents that the objector considers to be a basis for the objection.

Objections are limited to 2500 words, excluding attachments.

The DRSP will use electronic means to deliver copies of all materials filed to the applicant and to all objectors.

Each applicant and all objectors must provide copies of all submissions to the DRSP associated with the objection proceedings to one another, and to ICANN.

ICANN will publish a document on its website identifying all objections shortly after the deadline for filing objections has passed (refer to Item 1 above). Objections will not be published before that deadline.

### ***3.2.2 Objection Filing Fees***

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At the time an objection is filed, the objector is required to pay a nonrefundable filing fee in the amount set and published by the relevant DRSP. If the filing fee is not paid, the DRSP will dismiss the objection without prejudice. See Section 1.5 of Module 1 regarding fees.

## ***3.3 Filing a Response to an Objection***

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### ***3.3.1 Filing Procedures***

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These procedures are intended to cover dispute resolution procedures generally. Each DRSP will have its own rules that also must be followed.

Upon notification that ICANN has published the list of objections filed (refer to subsection 3.2.1), the DRSPs will notify the parties that responses must be filed within 30 calendar days of receipt of that notice. DRSPs will not accept late responses. Any applicant that fails to respond to an objection within the 30-day response period will be in default, which will result in the objector prevailing.

- All responses must be filed in English.
- Each response must be filed separately. That is, if an applicant wishes to respond to several objections, the applicant must file a response and pay a filing fee to respond to each objection.
- All responses must be filed with the appropriate DRSP. If a response is filed with a DRSP other than the DRSP specified for the objection ground, that DRSP will promptly notify the applicant of the error. The applicant then has 5 calendar days after receiving the notification to file its objection with the appropriate DRSP.

- Responses must be filed electronically and all interactions with the DRSPs during the dispute resolution process must be conducted online.
- Each response filed by an applicant must include the name and contact information, including address, phone, and email address, of all parties submitting the response.
- Each responding applicant's response must contain a point-by-point confirmation or denial of the claims made by each objector. The applicant also should attach any copies of documents that it considers to be a basis for the response.
- Responses are limited to 2500, excluding attachments.
- The DRSP will use electronic means to deliver copies of all materials filed to the applicant and to all objectors.
- Each applicant and all objectors must provide copies of all submissions to the DRSP associated with the objection proceedings to one another and to ICANN.

### ***3.3.2 Response Filing Fees***

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At the time an applicant files its response, it is required to pay a nonrefundable filing fee in the amount set and published by the relevant DRSP, which will be the same as the filing fee paid by the objector. If the filing fee is not paid, the response will be disregarded.

## ***3.4 Dispute Resolution Procedure***

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### ***3.4.1 Preliminary Objection Processing***

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Each DRSP will conduct an administrative review of each objection for compliance with all procedural rules within 14 calendar days of receiving the objection. Depending on the number of objections received, the DRSP may ask ICANN for a short extension of this deadline.

If the DRSP finds that the objection complies with procedural rules, the objection will be deemed filed, and the proceedings will continue. If the DRSP finds that the objection does not comply with procedural rules, the DRSP will dismiss the objection and close the proceedings without prejudice to the objector's submission of a new objection that complies with procedural rules. The DRSP's review or rejection of the objection will not interrupt the time limit for submitting an objection.

### ***3.4.2 Consolidation of Objections***

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Once the DRSP receives and processes all objections, at its discretion the DRSP may elect to consolidate certain objections.

An example of circumstances in which consolidation might occur is multiple objections to the same application based on the same ground.

In assessing whether to consolidate objections, the DRSP will weigh the efficiencies in time, money, effort, and consistency that may be gained by consolidation against the prejudice or inconvenience consolidation may cause. The DRSPs will endeavor to have all objections resolved on a similar timeline. It is intended that no sequencing of objections will be established.

New gTLD applicants and objectors also will be permitted to propose consolidation of objections, but it will be at the DRSP's discretion whether to agree to the proposal.

### ***3.4.3 Negotiation and Mediation***

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The parties to a dispute resolution proceeding are encouraged—but not required—to participate in a cooling off period to determine whether the dispute can be resolved by the parties. Each DRSP has panelists who can be retained as mediators to facilitate this process, should the parties elect to do so, and the DRSPs will communicate with the parties concerning this option and any associated fees.

If a mediator is appointed, that person may not serve on the panel to resolve the objection.

There are no automatic extensions of time associated with any cooling off period. The parties may submit joint requests for extensions of time to the DRSP according to its procedures, and the DRSP or the panel, if appointed, will decide whether to grant the requests, although extensions will be discouraged. The parties must limit their requests for extension to 30 calendar days.

### ***3.4.4 Selection and Number of Panelists***

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Appropriately qualified panelists will be appointed to each proceeding by the designated DRSP.

Panelists must be independent of the parties to an objection resolution proceeding. Each DRSP will follow its adopted procedures for requiring such independence,

including procedures for challenging and replacing a panelist for lack of independence.

There will be one panelist in proceedings involving a **string confusion objection**.

There will be one panelist with relevant experience in intellectual property rights disputes in proceedings involving an existing **legal rights objection**.

There will be three panelists recognized as eminent jurists of international reputation, in proceedings involving a **morality and public order objection**.

There will be one panelist in proceedings involving a **community objection**.

Neither the panelists, the DRSP, ICANN, nor their respective employees, Board members, or consultants will be liable to any party in any action for damages or injunctive relief for any act or omission in connection with any proceeding under the dispute resolution procedures.

#### **3.4.5 Adjudication**

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At its discretion, the panel appointed by the DRSP may request further statements or documents from the parties, although such requests will be limited and infrequent.

To keep costs down and limit delays, the panel will discourage and, if practicable, not permit any document production or other discovery-style requests from the parties.

Without its being requested by the parties, the panelists may appoint experts to be paid for by the parties, request live or written witness testimony, or request limited exchange of documents.

Any party may request a hearing; however, it is within the panel's discretion whether to allow such a hearing. The presumption is that the panel will render decisions based on written submissions and without a hearing.

If a request for a hearing is granted, videoconferences are to be used if possible. If not possible, then the DRSP panel will select a place for hearing if the parties cannot agree. The panel will determine whether the hearings are to be public or private. Hearings will last no more than one day, except in the most exceptional circumstances.

Typically, dispute resolution proceedings will be conducted in English, but may be conducted in another language in accordance with the rules of the provider.

### 3.4.6 *Decision*

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The DRSPs' final decisions will be in writing and will include:

- A summary of the dispute and findings; and
- The reasoning upon which the decision is based.

Each DRSP will develop a single format for all final decisions that its panelists render. The DRSP will notify the parties of the decision via email.

ICANN will strongly encourage DRSPs to use reasonable efforts to issue all final decisions within 45 days of the panel appointment date unless, after both parties have completed their initial submissions, the parties jointly request a short postponement of their adjudication date to accommodate negotiation or mediation or to accommodate other aspects of the proceedings, and the panel agrees.

When the panel is composed of three panelists, the decision will be made by a majority of the panelists.

Unless the panel decides otherwise, each DRSP will publish all decisions rendered by its panels in full on its website.

A dispute resolution panel decision will be considered an expert determination, and will be considered by ICANN in making a final decision regarding the success of any application.

### 3.4.7 *Dispute Resolution Fees*

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Before acceptance of objections, each DRSP will publish a schedule of costs for the proceedings that it administers under this procedure. These costs cover the fees and expenses of the members of the panel and the DRSP's administrative costs.

ICANN expects that string confusion and legal rights objection proceedings will involve a fixed amount charged by the panelists while morality and public order and community objection proceedings will involve hourly rates charged by the panelists.

Within 7 business days of constituting the panel, the DRSP will estimate the total costs and request advance payment in full of its costs from both the objector and the applicant.

Each party must make its advance payment within 15 calendar days of receiving the DRSP's request for payment. The respective filing fees paid by the parties will be credited against the amounts due for this advance payment of costs.

The DRSP may revise its estimate of the total costs and request additional advance payments from the parties during the resolution proceedings.

Additional fees may be required in specific circumstances; for example, if the DRSP receives supplemental submissions or elects to hold a hearing.

If an objector fails to pay these costs in advance, the DRSP will dismiss its objection and no fees paid by the objector will be refunded.

If an applicant fails to pay these costs in advance, the DRSP will sustain the objection and no fees paid by the applicant will be refunded.

After the hearing has taken place and the panel renders its decision, the DRSP will refund any costs paid in advance to the prevailing party.

### ***3.5 Dispute Resolution Principles (Standards)***

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Each panel will use appropriate general principles (standards) to evaluate the merits of each objection. The principles for adjudication on each type of objection are specified in the paragraphs that follow. The panel may also refer to other relevant rules of international law in connection with the standards.

The objector bears the burden of proof in each case.

The principles outlined below are subject to evolution based on ongoing consultation with DRSPs, legal experts, and the public.

#### ***3.5.1 String Confusion Objection***

---

A DRSP panel hearing a string confusion objection will consider whether the applied-for gTLD string is likely to result in string confusion.

String confusion exists where a string so nearly resembles another that it is likely to deceive or cause confusion. For a likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the

average, reasonable Internet user. Mere association, in the sense that the string brings another string to mind, is insufficient to find a likelihood of confusion.

### 3.5.2 *Legal Rights Objection*

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In interpreting and giving meaning to GNSO Recommendation 3 (“Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law”), a DRSP panel presiding over a legal rights objection will determine whether the potential use of the applied-for TLD by the applicant takes unfair advantage of the distinctive character or the reputation of the objector’s trademark or service mark (“mark”), or unjustifiably impairs the distinctive character or the reputation of the objector’s mark, or otherwise creates an impermissible likelihood of confusion between the applied-for TLD and the objector’s mark, by considering the following non-exclusive factors:

1. Whether the applied-for TLD is identical or similar, including in appearance, phonetic sound or meaning, to the objector’s existing mark.
2. Whether the objector’s acquisition and use of rights in the mark has been bona fide.
3. Whether and to what extent there is recognition in the relevant sector of the public of the sign corresponding to the TLD, as the mark of the objector, of the applicant or of a third party.
4. Applicant’s intent in applying for the TLD, including whether the applicant, at the time of application for the TLD, had knowledge of the objector’s mark, or could not have reasonably been unaware of that mark, and including whether the applicant has engaged in a pattern of conduct whereby it applied for or operates TLDs or registrations in TLDs which are identical or confusingly similar to the marks of others.
5. Whether and to what extent the applicant has used, or has made demonstrable preparations to use, the sign corresponding to the TLD in connection with a bona fide offering of goods or services or a bona fide provision of information in a way that does not interfere with the legitimate exercise by the objector of its mark rights.
6. Whether the applicant has marks or other intellectual property rights in the sign corresponding to the TLD,

and, if so, whether any acquisition of such a right in the sign, and use of the sign, has been bona fide, and whether the purported or likely use of the TLD by the applicant is consistent with such acquisition or use.

7. Whether and to what extent the applicant has been commonly known by the sign corresponding to the TLD, and if so, whether any purported or likely use of the TLD by the applicant is consistent therewith and bona fide.
8. Whether the applicant's intended-use of the TLD would create a likelihood of confusion with the objector's mark as to the source, sponsorship, affiliation, or endorsement of the TLD.

### ***3.5.3 Morality and Public Order Objection***

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This section is under construction. ICANN expects to implement a standard for morality and public order objections in accordance with international legal principles. Accordingly, ICANN has reviewed legal systems in all ICANN regions. ICANN has also consulted with judges, attorneys, and legal experts in many jurisdictions. The general principles guiding ICANN in the establishment of dispute resolution standards are: (1) everyone has the right to freedom of expression; and (2) such freedom of expression may be subject to certain narrowly interpreted exceptions that are necessary to protect other important rights. See Articles 19 and 20 of the International Covenant on Civil and Political Rights. ICANN continues to address the challenge of identifying standards appropriate for the global namespace.

### ***3.5.4 Community Objection***

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The four tests described here will enable a DRSP panel to determine whether there is substantial opposition from a significant portion of the community to which the string may be targeted. For an objection to be successful, the objector must prove that:

- The community invoked by the objector is a defined community; and
- Community opposition to the application is substantial; and
- There is a strong association between the community invoked and the applied-for gTLD string; and

- There is a likelihood of detriment to the community named by the objector if the gTLD application is approved.

Each of these tests is described in further detail below.

**Community** – The objector must prove that the community expressing opposition can be regarded as a well-defined community. A panel could balance a number of factors to determine this, including:

- Level of public recognition of the group as a community at a local and / or global level;
- Level of formal boundaries around the community and what elements are considered to form the community;
- How long the community has been in existence;
- How globally distributed is the community (breadth, level of importance)(this may not apply if the community is territorial); and
- How many people make up the community.

If opposition by a number of people is found, but the group claiming opposition is not determined to be a distinct community, the objection will fail.

**Substantial opposition** – The objector must prove substantial opposition within the community it has identified. A panel could balance a number of factors to determine whether there is substantial opposition, including:

- Number of expressions of opposition relative to the composition of the community;
- Distribution or diversity among sources of expressions of opposition, including:
  - Regional
  - Subsectors of community
  - Leadership of community
  - Membership of community
- Nature/intensity of opposition; and
- Costs incurred by objector in expressing opposition, including what other channels they have used to convey their opposition.

If some opposition within the community is determined, but it does not meet the standard of substantial opposition, the objection will fail.

**Targeting** – The objector must prove an association between the applied-for gTLD string and the community expressing opposition. Factors that could be balanced by a panel to determine this include:

- Statements contained in application;
- Other public statements by the applicant;
- Associations by the public.

If opposition by a community is determined, but there is no clear connection between the community and the applied-for gTLD string, the objection will fail.

**Detriment** – The objector must prove that there is a likelihood of detriment to the rights or legitimate interests of its associated community. Factors that could be used by a panel in making this determination include:

- Damage to the reputation of the community that would result from the applicant's operation of the applied-for gTLD string;
- Evidence that the applicant is not acting or does not intend to act in accordance with the interests of the community;
- Interference with the core activities of the community that would result from the applicant's operation of the applied-for gTLD string; and
- Dependence of the community on the DNS for its core activities.

**Defenses** – Satisfaction of the standing requirements for filing a Community Objection (refer to paragraph 3.1.2.4) by the applicant is a complete defense to an objection filed on community grounds.

# DRAFT - New gTLD Program – Objection and Dispute Resolution



An applicant may face anywhere from zero objections to multiple objections in any of the four areas

Objection filing phase opens

Party with standing files objection directly with DRSP for these grounds:

- **String Confusion**
- **Legal Rights**
- **Morality and Public Order; and/or**
- **Community**

Objector pays filing fee directly to DRSP

Objection filing phase closes

Applicant responds to objection by paying filing fee and responding to claims made by objector

Once the DRSPs receive all objections, at their discretion, the DRSPs may elect to consolidate certain objections if there are multiple objections to the same application based on the same ground

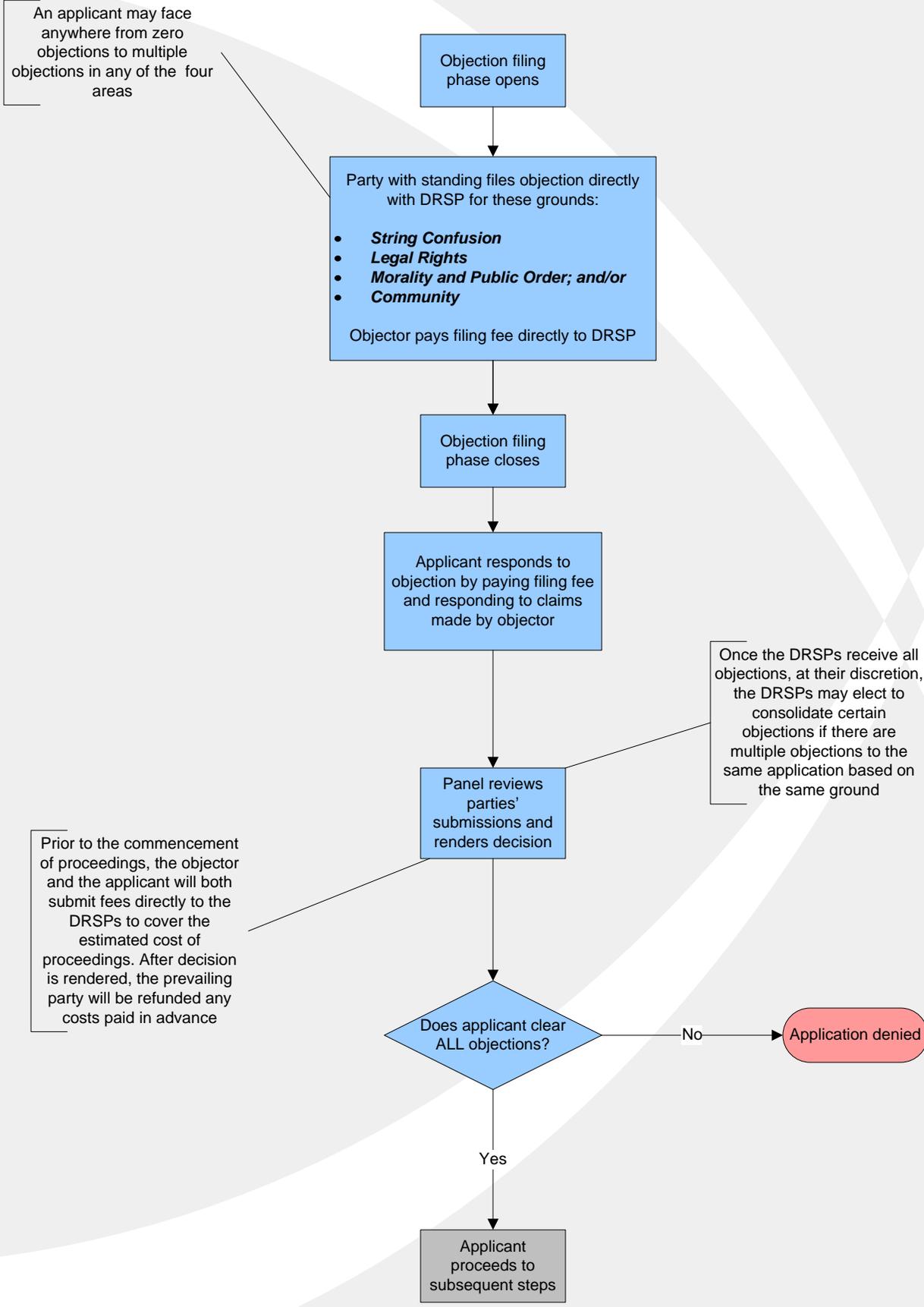
Panel reviews parties' submissions and renders decision

Prior to the commencement of proceedings, the objector and the applicant will both submit fees directly to the DRSPs to cover the estimated cost of proceedings. After decision is rendered, the prevailing party will be refunded any costs paid in advance

Does applicant clear ALL objections?

No → Application denied

Yes → Applicant proceeds to subsequent steps





# Draft Applicant Guidebook

## Module 4

Please note that this is a discussion draft only. Potential applicants should not rely on any of the proposed details of the new gTLD program as the program remains subject to further consultation and revision.

24 October 2008

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# Module 4

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## *String Contention Procedures*

This module describes situations in which contention over applied-for gTLD strings occurs, and the two methods available to applicants for resolving such contention cases.

### *4.1 String Contention*

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String contention occurs when either:

1. Two or more applicants for an identical gTLD string successfully complete all previous stages of the evaluation and dispute resolution processes; or
2. Two or more applicants for similar gTLD strings successfully complete all previous stages of the evaluation and dispute resolution processes, and the similarity of the strings is identified as creating a probability of user confusion if more than one of the strings is delegated.

ICANN will not approve applications for proposed gTLD strings that are identical or that would result in string confusion, called contending strings. If either situation 1 or 2 above occurs, such applications will proceed to contention resolution through either comparative evaluation or an efficient mechanism for contention resolution, both of which are described in this module. A group of applications for contending strings is referred to as a contention set.

#### *4.1.1 Identification of Contention Sets*

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Contention sets are groups of applications containing identical or similar applied-for gTLD strings. (In this RFP, “similar” means strings so similar that it is probable that detrimental user confusion would result if the two similar gTLDs are delegated into the root zone.) Contention sets are identified during Initial Evaluation from review of all applied-for TLD strings by the panel of String Similarity Examiners. ICANN will publish contention sets by the close of the Initial Evaluation period.

Applications for identical gTLD strings will be automatically assigned to a contention set. For example, if Applicant A and Applicant B both apply for .TLDSTRING, they will be

identified as being in a contention set. Such testing for identical strings also takes into consideration the code point variants listed in any relevant language reference table.

The String Similarity Examiners will also review the entire pool of applied-for strings to determine whether the strings proposed in any two or more applications are so similar that they would create a probability of user confusion if allowed to coexist in the DNS. The panel will make such a determination for each pair of applied-for gTLD strings. The outcome of the String Confusion Review described in subsection 2.1.1 is the identification of contention sets among applications that have direct or indirect contention relationships with one another.

Two strings are in **direct contention** if they are identical or so similar that there is a probability of user confusion if both were to be delegated as TLDs in the root zone. More than two applicants might be represented in a direct contention situation: if four different applicants applied for the same gTLD string, they would all be in direct contention with one another.

Two strings are in **indirect contention** if they are both in direct contention with a third string, but not with one another. Direct and indirect contention are explained in greater detail in the example that follows.

In Figure 4-1, Strings A and B are an example of direct contention. Strings C and G are an example of indirect contention. C and G both contend with B, but not with one another. The figure as a whole is one contention set. A contention set consists of all applications that are linked by string contention to one another, directly or indirectly.

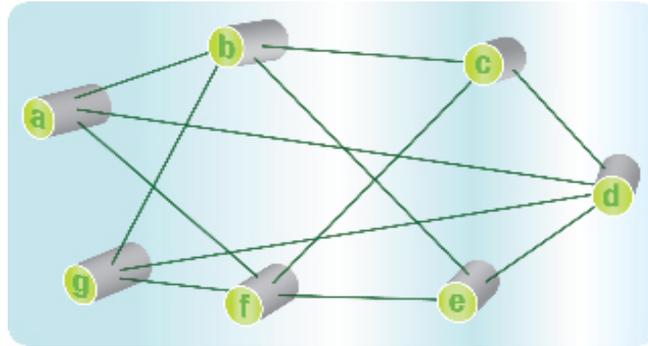


Figure 4-1 – This diagram represents one contention set, featuring both directly and indirectly contending strings.

While contention sets are determined during Initial Evaluation, the final configuration of the contention sets can only be established once the evaluation and dispute resolution process steps have concluded. This is because any application excluded through those steps might modify a contention set identified earlier. A contention set may be split into two sets or it may be eliminated altogether as a result of an Extended Evaluation or dispute resolution proceeding.

Refer to Figure 4-2: In contention set 1, applications D and G are eliminated. Application A is the only remaining application, so there is no contention left to resolve.

In contention set 2, all applications successfully complete Extended Evaluation and Dispute Resolution, so the original contention set remains to be resolved.

In contention set 3, application F is eliminated. Since application F was in direct contention with E and J, but E and J are not in contention with one other, the original contention set splits into two sets: one containing E and K in direct contention, and one containing I and J.

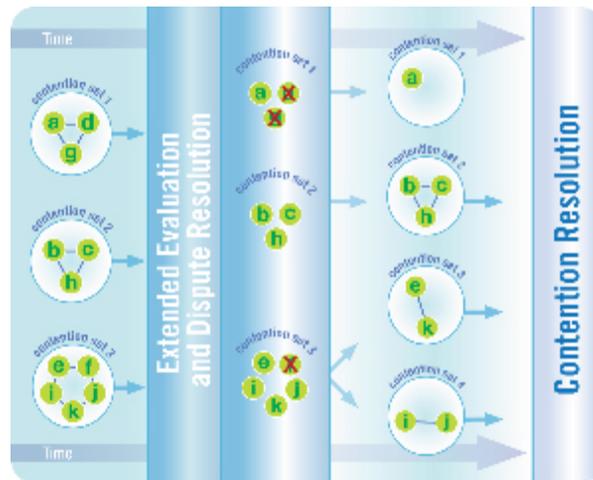


Figure 4-2 – Resolution of string contention cannot begin until all applicants within a contention set have completed all applicable previous stages.

The remaining contention cases must then be resolved through comparative evaluation or an efficient mechanism for contention resolution, depending on the circumstances. In this process, ICANN addresses each contention set to achieve an unambiguous resolution.

In their policy advice, the GNSO called for an efficient process to resolve cases of contention where there was no claim of community representation to be used as a factor for resolving the contention. While not settled, candidate means for this process are discussed below and in more detail in a companion paper to the Draft Applicant Guidebook called “Resolving string contention—a complete lifecycle including string contention resolution.”

#### 4.1.2 Impact of Dispute Resolution Proceedings on Contention Sets

If an applicant files a string confusion objection against another applicant (refer to Module 3), and the panel does find that string confusion exists; that is, rules in favor of the objector, the two applicants will be placed in direct contention with each other. Thus, the outcome of a proceeding based on a string confusion objection would result in a new contention set structure for the relevant applications.

### 4.1.3 Self-Resolution of String Contention

Applicants that are identified as being in contention may elect to reach a settlement or agreement among themselves whereby one or more applicants withdraws its application. This may occur at any stage of the process, once ICANN publicly posts the applications received on its website.

Applicants may not resolve a case of string contention by changing their applications by, for instance, selecting a new TLD string or creating a joint venture as a means to resolve the contention case.

### 4.1.4 Possible Contention Resolution Outcomes

Any application with no contention situation left to resolve is allowed to proceed to the next step. In some cases, an applicant who is not the outright winner of a string contention resolution process can still proceed. This situation is explained in the following paragraphs.

There may be more than one application that passes contention resolution within a contention set. If the strings within a given contention set are all identical, the applications are in direct contention with each other and there can only be one winner that proceeds to the next step.

However, where there are both direct and indirect contention situations within a set, more than one string may survive the resolution.

For example, if string A is in contention with B, B is in contention with C, but C is not in contention with A. If A wins the contention, B is eliminated but C can go on since C is not in direct contention with the winner and both strings can coexist in the DNS without risk for confusion.

## 4.2 Comparative Evaluation

Comparative evaluation can begin once all applicants in the contention set have completed all previous stages of the process.

The comparative evaluation is an independent analysis. Scores received in the applicant reviews are not carried forward to the comparative evaluation. Each applicant participating in the comparative evaluation begins with a score of zero.

#### 4.2.1 Eligibility for Comparative Evaluation

As described in subsection 1.2.2 of Module 1, all applicants are required to identify whether their application type is:

- Open; or
- Community-based.

Only community-based applicants may elect a comparative evaluation. ICANN policy states that if there is contention for strings, a claim to support a community by one party will be a reason to award priority to that application. If one community-based applicant within a contention set makes this election, all other community-based applicants in the same contention set will be part of the comparative evaluation.

Applicants designating their applications as community-based will also be asked to respond to a set of questions in the application form that would provide relevant information if a comparative evaluation occurs.

Before the comparative evaluation begins, all community-based applicants in the contention set may be asked to provide additional information relevant to the comparative evaluation. Additionally, the community-based applicants will be required to pay a Comparative Evaluation Fee (refer to Section 1.5 of Module 1) to participate in the comparative evaluation.

#### 4.2.2 Comparative Evaluation Procedure

Comparative evaluations for each contention set will be performed by a comparative evaluation provider appointed by ICANN to review all applications for contending gTLD strings. The panel's charter is to determine whether one of the community-based applications clearly and demonstrably would add more value to the Internet's Domain Name System. Open applicants within the contention set will not participate in the comparative evaluation.

If no single community-based applicant emerges as one that clearly and demonstrably adds more value to the namespace than all the competing contending applications, then all of the parties in the contention set (both open and community-based applicants) will proceed to an alternate mechanism for efficient contention resolution.

### 4.2.3 Comparative Evaluation Criteria

A panel appointed by the comparative evaluation provider will review and score the one or more community-based applicants who elected comparative evaluation against the criteria in the following table:

Criteria	Score		
	3	2	1
<b>Nexus between Proposed String and Community</b>	String is name or well-known abbreviation of community institution.	String is relevant to applicant's area of interest but also has other well-known associations.	No connection.
<b>Dedicated Registration Policies</b>	Registration eligibility is strictly limited to members of the pre-established community identified in the application. Registration policies also include name selection and use requirements consistent with the articulated scope and community-based nature of the TLD. Proposed policies include specific enforcement measures including investigation practices, penalties, takedown procedures and appeal mechanisms.	Registration eligibility is predominantly available to members of the pre-established community identified in the application, and also permits people or groups informally associated with the community to register. Policies include some elements of the above but one or more elements are missing.	No dedicated registration policies.
<b>Community Establishment</b>	Clearly identified, organized and pre-established community of considerable size and longevity.	The community addressed fulfills some but not all the requirements for a score of 3.	No community addressed.
<b>Community Endorsement</b>	Endorsement by a recognized institution or by member organizations.	Endorsement by some groups with apparent relevance, but also some opposition by groups with apparent relevance.	Assorted endorsements from individuals or groups of unknown relevance – or – no endorsement by any community.

If no applicant scores 11 or more, there is no clear winner. If only one applicant scores 11 or more, that applicant will be declared the winner.

If more than one applicant scores 11 or more, the evaluators will consider what portion of the community is represented by the application. *If one applicant represents*

*a much larger share of the relevant community than another, that will be a basis for awarding priority.*

Following the comparative evaluation, ICANN will review the results and reconfigure the contention set as needed. The same procedure will occur for remaining contention sets involving any community-based application that has elected comparative evaluation. If no community-based applicant that has elected comparative evaluation is left in the contention set, any applications remaining in contention will proceed to a subsequent contention resolution process. Applications not in contention will proceed toward delegation.

### ***4.3 Efficient Mechanism for Contention Resolution***

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A tie-breaker mechanism will be developed for resolving string contention among the applicants within a contention set, if the contention has not been resolved by other means. Unless the specific conditions for comparative evaluation outlined in Section 4.2 apply, this mechanism will be used to resolve the contention. This mechanism may also be used if no clear winner is identified during the comparative evaluation process.

The GNSO policy recommendations call for an efficient means of resolution. Continued investigation regarding the availability of alternative methods will guide ICANN's development of this mechanism.

The first efficient means of resolution that will be employed is a settlement arrived at by contending parties. Applicants for identical or similar TLDs can arrive at an accommodation where all in direct contention withdraw except for one. As described earlier, those withdrawing cannot apply for a new string. Nor can contending parties combine to form a new applicant. It is expected that many cases of contention will be resolved in this manner as it will be the most efficient and economical for the contending parties.

Failing to arrive at accommodation of the type described just above, auctions are one means of last resort that is being explored to resolve the contention. The purpose of an auction is to resolve contention in a clear, objective manner.

**Auction proceeds** – The purpose of an auction is to resolve contention in a clear, objective manner. It is not to raise revenue. While there may be significant proceeds from auctions in the event they occur, it is important to understand that this in no way the purpose of the auction. The annual budget process sets ICANN’s funding and spending limits. ICANN has no authorization to spend beyond the budget. ICANN already has precedent of returning revenue to the community when last year and in 2006 ICANN reduced registration fees from 25¢ to 20¢ over two years as a result of an unforeseen growth in revenue. Proceeds from auctions will be reserved until the uses of the proceeds are determined through a community consultation. The proceeds will not go into ICANN’s general expense budget but will be separately earmarked for projects or uses identified by the community. This important aspect of the auction process and its result will be an important part of the communications plan for the new gTLD program.

The new gTLD application fee is designed to be cost/revenue neutral. It factors in costs already forgone, future processing costs and legal expenses that are significant and would be a large drain on the Corporation’s established budget.

See further details on the exploration of an auction model in the contention lifecycle at <http://www.icann.org/en/topics/string-contention-22oct08.pdf>.

In practice, ICANN expects that most contention cases will be resolved through other means before reaching this stage.

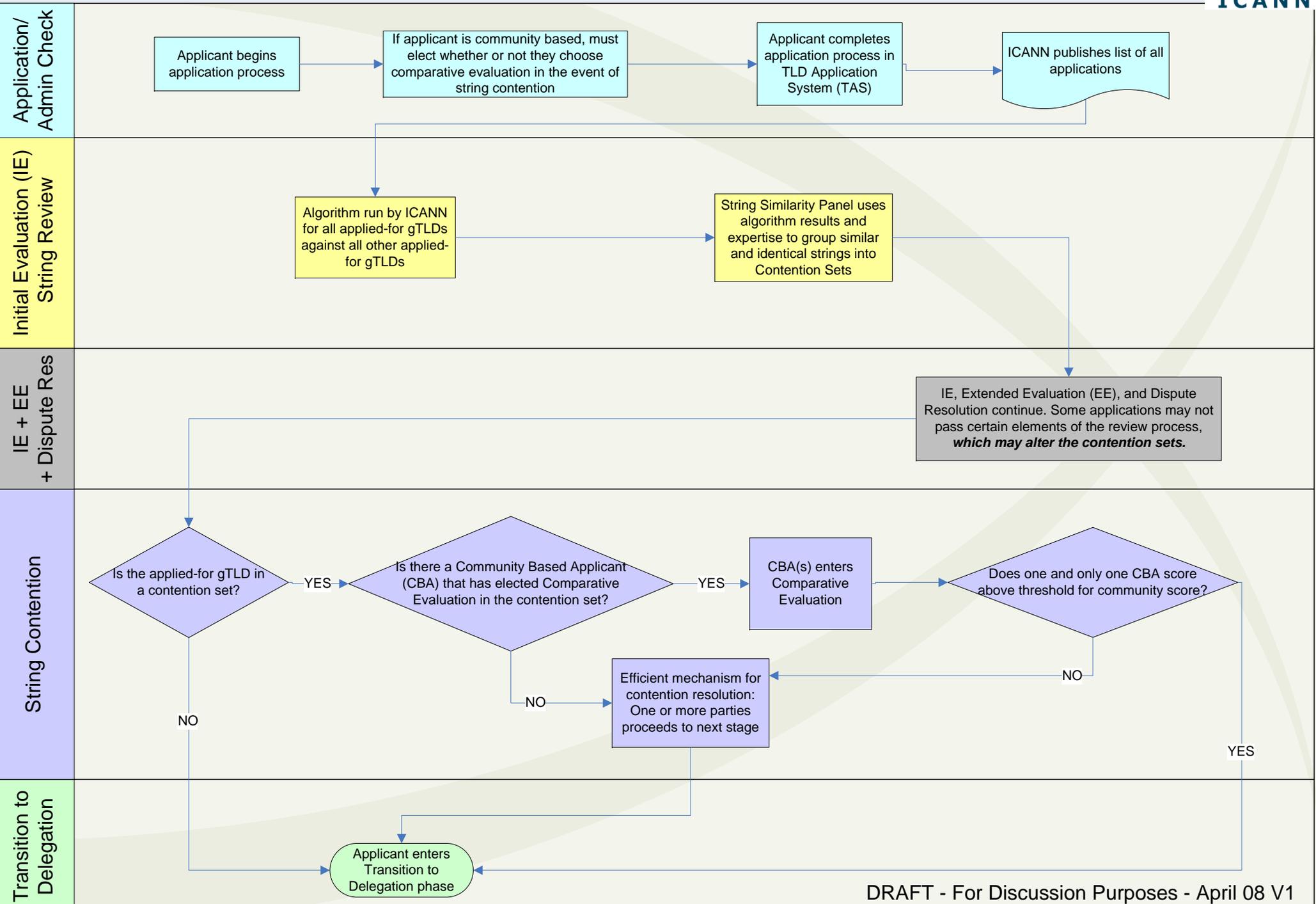
#### ***4.4 Contention Resolution and Contract Execution***

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An applicant that has been declared winner of a contention resolution process will proceed by entering into the contract execution phase. (Refer to section 5.1 of Module 5.)

If the winner of the contention resolution has not executed a contract within 90 days of the decision, ICANN has the right to extend an offer to the runner-up applicant to proceed with its application. For example, in a comparative evaluation, the applicant with the second-

highest score (if equal to or greater than eleven, might be selected to go on to the next step, delegation. (Refer to Module 5.) Similarly, in an efficient mechanism for contention resolution, another applicant who would be considered the runner-up applicant might proceed to the delegation step. This offer is at ICANN's option only. The runner-up applicant in a contention resolution process has no automatic right to an applied-for gTLD string if the first place winner does not execute a contract within a specified time.





# Draft Applicant Guidebook

## Module 5

Please note that this is a discussion draft only. Potential applicants should not rely on any of the proposed details of the new gTLD program as the program remains subject to further consultation and revision.

24 October 2008

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# Module 5

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## *Transition to Delegation*

This module describes the final steps required of an applicant, including execution of a registry agreement with ICANN and preparing for delegation of the new gTLD string into the root zone.

### *5.1 Registry Agreement*

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All applicants that have successfully completed the evaluation process—including, if necessary, the dispute resolution and string contention processes—are required to enter into a registry agreement with ICANN in order to proceed to delegation.

It is important to note that the agreement referred to below does not constitute a formal position by ICANN and has not been approved by the ICANN Board of Directors. The agreement is set out here for review and community discussion purposes and as a means to improve the effectiveness of the agreement in providing for increased competition and choice for consumers in a stable, secure DNS.

The contract terms can be reviewed at <http://www.icann.org/en/topics/new-gtld-draft-agreement-24oct08-en.pdf>. All successful applicants are expected to enter into the agreement substantially as written. The terms of the contract and, in particular, differences with existing registry agreements are explained in a companion paper to the agreement, *Summary of Changes to Base Agreement for New gTLDs*, <http://www.icann.org/en/topics/new-gtld-draft-summary-changes-24oct08-en.pdf>.

After an applicant has successfully completed the application process, ICANN may conduct a pre-contract review. To ensure that an applicant continues to be a going concern in good legal standing, ICANN reserves the right to ask the applicant to submit updated documentation and information before entering into the registry agreement.

If at any time during the evaluation process information previously submitted by an applicant becomes untrue or

inaccurate, the applicant must promptly notify ICANN and submit updated information. This includes applicant-specific information such as changes in financial position and changes in ownership or control of the applicant.

## **5.2 Pre-Delegation Testing**

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Following completion of the Board review, each applicant will be required to complete pre-delegation steps as a prerequisite to entering the IANA process for delegation into the root zone. The pre-delegation check must be completed within the time period specified in the registry agreement.

### **5.2.1 Technical Testing**

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The purpose of the pre-delegation technical test is to verify the applicant has met its commitment to establish registry operations in accordance with the technical and operational criteria described, along with the applicant questions. (Refer to Module 2.) The checks are also intended to ensure that the applicant can operate the gTLD in a stable and secure manner. All applicants will be tested on a pass/fail basis according to the questions and criteria that follow.

Question	Criteria
<b>1</b>	<b>IDN (variant) tables</b>
If applicant will be supporting IDNs, was the IDN table attached to the application when originally submitted and does it fulfill IDN and IANA guidelines and requirements?	IDN tables must be developed and provided by the IDN string applicant at the time the application was submitted. The table must fulfill the requirements from the IDN Guidelines as well as the IANA repository requirements in order to be considered valid (see <a href="http://iana.org/procedures/idn-repository.html">http://iana.org/procedures/idn-repository.html</a> ).
<b>2</b>	<b>DNSSEC keys, materials</b>
If DNSSEC is offered as part of registry services at time of application, can applicant comply with requirements?	Trust anchor for the registry will be published in the IANA Interim Trust Anchor Repository. Validity will be determined by verifying that DNS resolvers that support DNSSEC can successfully retrieve and DNSSEC validate information from that zone when configured with the published trust anchor for the zone.
<b>3</b>	<b>Architecture load requirements</b>
Has the applicant implemented a network architecture necessary to support load characteristics, as outlined in its application?	Applicant will self-certify adherence to this requirement and provide materials to ICANN that demonstrate adherence. Examples of self-certification documents include but are not limited to a network/system diagram of the as-built network system (demonstrating correspondence to documentation in initial application), results of load testing performed by the applicant, and actual performance of the configuration in use for other registries. At ICANN's discretion, aspects of this self-certification documentation can be audited on-site at the services delivery point of the registry.

Question	Criteria
<b>4</b>	<b>IPv6 for registrants</b>
Does registry support provisioning of IPv6 services for its registrants?	Registry must support provisioning of IPv6 services on behalf of its registrants. This means that registrar systems will allow entry of IPv6 addresses in all relevant address fields, that the SRS system is set up to support the communication of IPv6 addresses, and that registry name servers can be provisioned with IPv6 addresses. Applicant will demonstrate successful provisioning of a test account with IPv6 name server entries.
<b>5</b>	<b>IPv6 reachability</b>
Does registry support access to DNS servers over an IPv6 network?	<i>Note: This requirement is under consideration and the community is urged to provide feedback on this requirement.</i> IANA currently has a minimum set of technical requirements for IPv4 name service. These include two nameservers separated by geography and by network topology, which each serve a consistent set of data, and are reachable from multiple locations across the globe. The registry will meet this same criterion for IPv6, requiring IPv6 transport to their network. Applicant will identify IPv6-reachable name servers that meet these requirements, and reachability will be verified by ICANN.
<b>6</b>	<b>Escrow deposit sample</b>
Has the applicant demonstrated the ability to conform to registry escrow requirements? See <a href="http://www.icann.org/en/topics/new-gtld-draft-escrow-spec-24oct-08-en.pdf">http://www.icann.org/en/topics/new-gtld-draft-escrow-spec-24oct-08-en.pdf</a> .	The applicant will provide a conforming sample of a dummy data deposit showing correct type and formatting of content. The applicant will also provide evidence of an agreement with an escrow provider complying with Part B of the Data Escrow Requirements.
<b>7</b>	<b>System monitoring</b>
Has the applicant implemented the system monitoring described by the applicant in the initial application?	Applicant will self-certify adherence to this requirement and provide materials to ICANN that demonstrate adherence. Examples of self-certification documents include but are not limited to: diagrams of monitoring systems (demonstrating correspondence to documentation provided in the application), output of periodic monitoring runs performed by the applicant demonstrating capability claimed in the application, and actual performance of this monitoring set up in use for other registries. At ICANN's discretion, aspects of this self-certification documentation can be audited on-site at the services delivery point of the registry.
<b>8</b>	<b>Registry continuity planning</b>
Has applicant demonstrated capability to comply with ICANN's Registry Continuity Plan? See <a href="http://www.icann.org/registries/failover/icann-registry-failover-plan-15jul08.pdf">http://www.icann.org/registries/failover/icann-registry-failover-plan-15jul08.pdf</a>	Applicant will self-certify adherence to this requirement and provide materials to ICANN that demonstrate adherence. Examples include identification of appropriate contact points and evidence of the registry's own continuity plan, and identification of a registry services continuity provider.
<b>9</b>	<b>System performance requirements</b>
Has applicant demonstrated capability to comply with the performance specifications? See <a href="http://www.icann.org/en/topics/new-gtld-draft-performance-spec-24oct08-en.pdf">http://www.icann.org/en/topics/new-gtld-draft-performance-spec-24oct08-en.pdf</a>	Applicant will self-certify adherence to this requirement and provide materials to ICANN that demonstrate adherence. Examples of self-certification documents include but are not limited to performance and availability results that demonstrate DNS availability at stated levels for at least one month, and Whois service availability for at least one month. At ICANN's discretion, aspects of this self-certification documentation can be audited on-site at the services delivery point of the registry.

### *5.2.2 Additional Requirements*

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At the pre-delegation stage, an applicant must also provide documentary evidence of its ability to fund ongoing basic registry operations for then-existing registrants for a period of three to five years in the event of registry failure, default or until a successor operator can be designated. This obligation can be met by securing a financial instrument such as a bond or letter of credit (i.e., evidence of ability to provide financial security guaranteed by a creditworthy financial institution); contracting with and funding a services provider to extend services; segregating funding; or other means.

Once an applicant has met the requirements in 5.2.1 and 5.2.2 above, it is eligible to proceed to delegation of its applied-for gTLD string by IANA.

If an applicant does not complete the pre-delegation steps within the time period specified in the registry agreement, ICANN reserves the right to terminate the registry agreement.

### *5.3 IANA Delegation Process*

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Upon notice of successful completion of the ICANN pre-delegation testing, applicants may initiate the process for delegation of the new gTLD into the root zone database. Information about the delegation process is available at <http://iana.org/domains/root/>.

### *5.4 Ongoing Operations*

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ICANN will continue to provide support for gTLD registry operators as they launch and maintain registry operations. ICANN's gTLD registry liaison function provides a point of contact for gTLD registry operators for assistance on a continuing basis.

The registry agreement contains a provision for ICANN to perform audits to ensure that the registry operators remain in compliance with agreement obligations.



# Draft Applicant Guidebook

## Module 6

Please note that this is a discussion draft only. Potential applicants should not rely on any of the proposed details of the new gTLD program as the program remains subject to further consultation and revision.

24 October 2008

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# Module 6

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## *Top-Level Domain Application - Terms and Conditions*

By submitting this application through ICANN's online interface for a generic Top Level Domain (gTLD) (this application), applicant (including all parent companies, subsidiaries, affiliates, agents, contractors, employees and any and all others acting on its behalf) agrees to the following terms and conditions (these terms and conditions) without modification. Applicant understands and agrees that these terms and conditions are binding on applicant and are a material part of this application.

1. Applicant warrants that the statements and representations contained in the application (including any documents submitted and oral statements made in connection with the application) are true and accurate and complete in all material respects, and that ICANN may rely on those statements and representations fully in evaluating this application. Applicant acknowledges that any material misstatement or misrepresentation (or omission of material information) will reflect negatively on this application and may cause ICANN and the evaluators to reject the application.
2. Applicant warrants that it has the requisite organizational power and authority to make this application on behalf of applicant, and is able to make all agreements, representations, waivers, and understandings stated in these terms and conditions and to enter into the form of registry agreement as posted with these terms and conditions.
3. Applicant acknowledges and agrees that ICANN has the right to reject any and all applications for new gTLDs, and that there is no assurance that any additional gTLDs will be created. The decision to proceed with review and consideration of an application to establish one or more gTLDs is entirely at ICANN's discretion. ICANN reserves the right to reject any application that ICANN is prohibited from considering for a gTLD under applicable law or policy, in which case any fees submitted in connection with such application will be returned to the applicant.

4. Applicant agrees to pay all fees that are associated with this application. These fees include the evaluation fee (which is to be paid in conjunction with the submission of this application), and any fees associated with the progress of the application to the extended evaluation stages of the review and consideration process with respect to the application, including any and all fees as may be required in conjunction with the dispute resolution process as set forth in the application. Applicant acknowledges that the initial fee due upon submission of the application is only to obtain consideration of an application. ICANN makes no assurances that an application will be approved or will result in the delegation of a gTLD proposed in an application. Applicant acknowledges that if it fails to pay fees within the designated time period at any stage of the application review and consideration process, applicant will forfeit any fees paid up to that point and the application will be cancelled.
5. Applicant shall indemnify, defend, and hold harmless ICANN (including its affiliates, subsidiaries, directors, officers, employees, consultants, evaluators, and agents, collectively the ICANN Affiliated Parties) from and against any and all third-party claims, damages, liabilities, costs, and expenses, including legal fees and expenses, arising out of or relating to: (a) ICANN's consideration of the application, and any approval or rejection of the application; and/or (b) ICANN's reliance on information provided by applicant in the application.
6. Applicant hereby releases ICANN and the ICANN Affiliated Parties from any and all claims by applicant that arise out of, are based upon, or are in any way related to, any action, or failure to act, by ICANN or any ICANN Affiliated Party in connection with ICANN's review of this application, investigation or verification, any characterization or description of applicant or the information in this application, or the decision by ICANN to recommend, or not to recommend, the approval of applicant's gTLD application. APPLICANT AGREES NOT TO CHALLENGE, IN COURT OR IN ANY OTHER JUDICIAL FORA, ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION, AND IRREVOCABLY WAIVES ANY RIGHT TO SUE OR PROCEED ON THE BASIS OF ANY OTHER LEGAL CLAIM AGAINST ICANN AND ICANN AFFILIATED PARTIES WITH RESPECT TO THE APPLICATION. APPLICANT ACKNOWLEDGES AND

ACCEPTS THAT APPLICANT'S NONENTITLEMENT TO PURSUE ANY RIGHTS, REMEDIES, OR LEGAL CLAIMS AGAINST ICANN OR THE ICANN AFFILIATED PARTIES WITH RESPECT TO THE APPLICATION SHALL MEAN THAT APPLICANT WILL FOREGO ANY RECOVERY OF ANY APPLICATION FEES, MONIES INVESTED IN BUSINESS INFRASTRUCTURE OR OTHER START-UP COSTS AND ANY AND ALL PROFITS THAT APPLICANT MAY EXPECT TO REALIZE FROM THE OPERATION OF A REGISTRY FOR THE TLD.

7. Applicant hereby authorizes ICANN to publish on ICANN's website, and to disclose or publicize in any other manner, any materials submitted to, or obtained or generated by, ICANN and the ICANN Affiliated Parties in connection with the application, including evaluations, analyses and any other materials prepared in connection with the evaluation of the application; provided, however, that information will not be published to the extent that the application specifically identifies such information as confidential. A general statement as the confidentiality of the application will not be sufficient for these purposes. Except for information that ICANN determines to treat as confidential, applicant understands and acknowledges that ICANN does not and will not keep the remaining portion of the application or materials submitted with the application confidential.
8. Applicant certifies that it has obtained permission for the posting of any personally identifying information included in this application or materials submitted with this application. Applicant acknowledges that the information that ICANN posts may remain in the public domain in perpetuity, at ICANN's discretion.
9. Applicant gives ICANN permission to use applicant's name and/or logo in ICANN's public announcements (including informational web pages) relating to top-level domain space expansion.
10. Applicant understands and agrees that it will acquire rights in connection with a gTLD only in the event that it enters into a registry agreement with ICANN, and that applicant's rights in connection with such gTLD will be limited to those expressly stated in the registry agreement. In the event ICANN agrees to recommend the approval of the application for applicant's proposed gTLD, applicant agrees to enter into the registry agreement with ICANN in the form published in

connection with the application materials. Applicant may not resell, assign, or transfer any of applicant's rights or obligations in connection with the application.

11. Applicant authorizes ICANN to:
  - a. Contact any person, group, or entity to request, obtain, and discuss any documentation or other information that, in ICANN's sole judgment, may be pertinent to the application;
  - b. Consult with persons of ICANN's choosing regarding the information in the application or otherwise coming into ICANN's possession.
12. For the convenience of applicants around the world, the application materials published by ICANN in the English language have been translated into certain other languages frequently used around the world. applicant recognizes that the English language version of the application materials (of which these terms and conditions is a part) is the version that binds the parties, that such translations are non-official interpretations and may not be relied upon as accurate in all respects, and that in the event of any conflict between the translated versions of the application materials and the English language version, the English language version controls.

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# Glossary

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## *Terms Applicable to this RFP and to the New gTLD Application Process*

A-Label	The ASCII-Compatible Encoding (ACE) form of an IDNA-valid string.
Applicant	An entity that has applied to ICANN for a new gTLD by submitting its application form through the online application system.
Application	An application for a new gTLD lodged in response to this RFP. An application includes the completed Application Form any supporting documents, and any other information that may be submitted by the applicant at ICANN's request.
Application form	The set of questions to which applicants provide responses, as at <a href="http://www.icann.org/en/topics/new-gtld-draft-evaluation-criteria-24oct08-en.pdf">http://www.icann.org/en/topics/new-gtld-draft-evaluation-criteria-24oct08-en.pdf</a> .
Application interface	The web-based interface operated by ICANN, available at [URL to be inserted in final version of RFP]
Application round	The complete succession of stages for processing the applications received during one application submission period for gTLDs. This RFP is for one application round. Any subsequent application rounds will be the subject of subsequent RFPs.
Application submission period	The period during which applicants may submit applications through the application interface.
Applied for gTLD string	A gTLD string that is subject of an application.
American Standard Code for Information Interchange (ASCII)	A character encoding based on the English alphabet. ASCII codes represent text in computers, communications equipment, and other devices that work with text. Most modern character encodings—which support many more characters than did the original—have a historical basis in ASCII.
AXFR	Asynchronous full transfer, a DNS protocol mechanism through which a DNS zone can be replicated to a remote DNS server.
Business ID	A number such as a federal tax ID number or employer information number.

ccTLD	Two-letter top-level domains corresponding with the ISO 3166-1 country code list. See <a href="http://iana.org/domains/root/db/">http://iana.org/domains/root/db/</a> .
Community-based TLD	A community-based gTLD is a gTLD that is operated for the benefit of a defined community consisting of a restricted population. An applicant designating its application as community-based must be prepared to substantiate its status as representative of the community it names in the application
Community objection	An objection based on the grounds that there is substantial opposition to a gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted.
Comparative evaluation	A process to resolve string contention, which may be elected by a community-based applicant.
Consensus policy	A policy created through the GNSO policy development process listed in Annex A of the ICANN Bylaws. See <a href="http://www.icann.org/en/general/bylaws.htm#AnnexA">http://www.icann.org/en/general/bylaws.htm#AnnexA</a> . A list of current consensus policies is available at <a href="http://www.icann.org/en/general/consensus-policies.htm">http://www.icann.org/en/general/consensus-policies.htm</a> .
Contention sets	A group of applications containing identical or similar applied-for gTLD strings.
Country-code TLD	See ccTLD.
Delegation	The process through which the root zone is edited to include a new TLD, and the management of domain name registrations under such TLD is turned over to the registry operator.
Digit	Any digit between "0" and "9" (Unicode code points U+0030 to U+0039).
Dispute Resolution Service Provider (DRSP)	An entity engaged by ICANN to adjudicate dispute resolution proceedings in response to formally filed objections.
Domain name	A name consisting of two or more (for example, john.smith.name) levels, maintained in a registry database.
Domain Name System Security Extensions (DNSSEC)	DNSSEC secures domain name look-ups on the Internet by incorporating a chain of digital signatures into the DNS hierarchy.
Existing TLD	A string included on the list at <a href="http://iana.org/domains/root/db">http://iana.org/domains/root/db</a>

Extended Evaluation	The second stage of evaluation applicable for applications that do not pass the Initial Evaluation, but are eligible for further review.
Extended Evaluation period	The period that may follow the Initial Evaluation period, for eligible applications which do not pass the Initial Evaluation.
Evaluator	The individuals or organization(s) appointed by ICANN to perform review tasks within Initial Evaluation and Extended Evaluation under ICANN direction
Evaluation fee	The fee due from each applicant to obtain consideration of its application.
Geographical Names Panel (GNP)	A panel of experts charged by ICANN with reviewing applied-for TLD strings that relate to geographical names.
Generic Names Supporting Organization (GNSO)	ICANN's policy-development body for generic TLDs and the lead in developing the policy recommendations for the introduction of new gTLDs.
Generic top-level domain gTLD	See gTLD A TLD with three or more characters that does not correspond to any country code.
Hyphen	The hyphen "-" (Unicode code point U+0029).
Internet Assigned Numbers Authority (IANA)	IANA is the authority originally responsible for overseeing IP address allocation, coordinating the assignment of protocol parameters provided for in Internet technical standards, and managing the DNS, including delegating top-level domains and overseeing the root name server system. Under ICANN, IANA distributes addresses to the Regional Internet Registries, coordinate with the IETF and other technical bodies to assign protocol parameters, and oversees DNS operation.
ICANN	Internet Corporation for Assigned Names and Numbers
ICANN-accredited registrar	A company that registers domain names for Internet users. There are more than 900 ICANN-accredited registrars who provide domains to Internet users. The list of ICANN-accredited registrars is available at <a href="http://www.icann.org/en/registrars/accredited-list.html">http://www.icann.org/en/registrars/accredited-list.html</a>
Internationalized Domain Name (IDN)	A domain name including at least one character other than those in letters (a,...,z), digits (0,...,9) and the hyphen (-).
Internationalizing Domain Names in Applications (IDNA)	The technical protocol used for processing domain names containing non-ASCII characters in the DNS.

IDN ccTLD Fast Track	The process for introducing a limited number of IDN ccTLDs associated with the ISO-3166 two-letter codes. See <a href="http://www.icann.org/en/topics/idn/fast-track/">http://www.icann.org/en/topics/idn/fast-track/</a> .
IDN table	A table listing all those characters that a particular TLD registry supports. If one or more of these characters are considered a variant this is indicated next to that/those characters. It is also indicated which character a particular character is a variant to. The IDN tables usually hold characters representing a specific language, or they can be characters from a specific script. Therefore the IDN table is sometimes referred to as "language variant table", "language table", "script table" or something similar.
IGO	Inter-governmental organization.
Internet Engineering Task Force (IETF)	The IETF is a large, open international community of network designers, operators, vendors, and researchers concerned with the evolution of the Internet architecture and the smooth operation of the Internet.
Initial Evaluation period	The period during which ICANN will review an applied-for gTLD string, an applicant's technical and financial capabilities, and an applicant's proposed registry services.
International Phonetic Alphabet	A notational standard for phonetic representation in multiple languages. See <a href="http://www.arts.gla.ac.uk/IPA/IPA_chart_(C)2005.pdf">http://www.arts.gla.ac.uk/IPA/IPA_chart_(C)2005.pdf</a> .
IXFR	Incremental Zone Transfer, a DNS protocol mechanism through which a partial copy of a DNS zone can be replicated to a remote DNS server.
LDH (Letter Digit Hyphen)	The hostname convention defined in RFC 952, as modified by RFC 1123.
Legal Rights objection	An objection on the grounds that the applied-for gTLD string infringes existing legal rights of the objector.
Letter	Any character between "a" and "z" (in either case) (Unicode code points U+0061 to U+007A or U+0041 to U+005A).
LLC	Limited liability corporation.
Morality and public order objection	An objection made on the grounds that the applied-for gTLD string is contrary to generally accepted legal norms of morality and public order that are recognized under international principles of law.
Objection	A formal objection filed with a Dispute Resolution Service Provider in accordance with that provider's procedures.
Objection filing period	The period during which formal objections may be filed

	concerning a gTLD application submitted to ICANN
Objector	One or more persons or entities that have filed a formal objection against a new gTLD application with the appropriate DRSP.
Open TLD	An open TLD can be used for any purpose consistent with the requirements of the application and evaluation criteria, and with the registry agreement. An open TLD may or may not have a formal relationship with an exclusive registrant or user population. It may or may not employ eligibility or use restrictions.
Pre-delegation test	A technical test and other steps required of applicants before delegation of the applied-for gTLD string into the root zone.
Primary contact	The person named by the applicant as the main contact for the application, and having authority to execute decisions concerning the application.
Principal place of business	The location of the head office of a business or organization.
Registrar	See ICANN-accredited registrar.
Registry	A registry is the authoritative, master database of all domain names registered in each top-level domain. The registry operator keeps the master database and also generates the zone file that allows computers to route Internet traffic to and from top-level domains anywhere in the world.
Registry Agreement	The agreement executed between ICANN and successful gTLD applicants, which appears in draft form at <a href="http://www.icann.org/en/topics/new-gtld-draft-agreement-24oct08-en.pdf">http://www.icann.org/en/topics/new-gtld-draft-agreement-24oct08-en.pdf</a> .
Registry operator	The entity entering into the Registry Agreement with ICANN, responsible for setting up and maintaining the operation of the registry.
Registry services	(1) Operations of the registry critical to the following tasks: (i) the receipt of data from registrars concerning registrations of domain names and name servers; (ii) provision to registrars of status information relating to the zone servers for the TLD; (iii) dissemination of TLD zone files; (iv) operation of the registry zone servers; and (v) dissemination of contact and other information concerning domain name server registrations in the TLD as required by the registry agreement; and (2) other products or services that the registry operator is required to provide because of the establishment of a consensus policy; and (3) any other products or services that only a registry operator is capable of providing, by reason of its

	designation as the registry operator.
Registry Services Technical Evaluation Panel (RSTEP)	The Registry Services Technical Evaluation Panel is a group of experts in the design, management, and implementation of the complex systems and standards-protocols used in the Internet infrastructure and DNS. RSTEP members are selected by its chair. All RSTEP members and the chair have executed an agreement requiring that they consider the issues before the panel neutrally and according to the definitions of security and stability.
Reserved Name	A string included on the Top-Level Reserved Names List (Refer to paragraph 2.1.1.2 of Module 2.)
Request for Comments (RFC)	The RFC document series is the official publication channel for Internet standards documents and other publications of the IESG, IAB, and Internet community.
Rightholder	The person or entity that maintains a set of rights to a certain piece of property.
Root Zone	The root zone database represents the delegation details of top-level domains, including gTLDs and country-code TLDs. As manager of the DNS root zone, IANA is responsible for coordinating these delegations in accordance with its policies and procedures.
Round	See application round.
Script	<p>A collection of symbols used for writing a language. There are three basic kinds of script. One is the alphabetic (e.g. Arabic, Cyrillic, Latin), with individual elements termed "letters". A second is ideographic (e.g. Chinese), the elements of which are "ideographs". The third is termed a syllabary (e.g. Hangul), with its individual elements represent syllables. The writing systems of most languages use only one script but there are exceptions such as for example, Japanese, which uses four different scripts, representing all three of the categories listed here.</p> <p>It is important to note that scripts which do not appear in the Unicode Code Chart are completely unavailable for inclusion in IDNs.</p>
Security	In relation to a proposed registry service, an effect on security by the proposed Registry Service means (1) unauthorized disclosure, alteration, insertion, or destruction of registry data, or (2) unauthorized access to or disclosure of information or resources on the Internet by systems operating in accordance with all applicable standards.
Shared Registry System (SRS)	A system that allows multiple registrars to make changes

	to a registry simultaneously.
Stability	In relation to a proposed registry service, an effect on stability means that the proposed registry service (1) does not comply with applicable relevant standards that are authoritative and published by a well-established, recognized, and authoritative standards body, such as relevant standards-track or best current practice RFCs sponsored by the IETF; or (2) creates a condition that adversely affects the throughput, response time, consistency, or coherence of responses to Internet servers or end systems, operating in accordance with applicable relevant standards that are authoritative and published by a well-established, recognized and authoritative standards body, such as relevant standards-track or best current practice RFCs and relying on registry operator's delegation information or provisioning services.
String	The string of characters comprising an applied-for gTLD.
String confusion objection	An objection filed on the grounds that the applied-for gTLD string is confusingly similar to an existing TLD or to another applied-for gTLD.
String Similarity Algorithm	An algorithmic tool used to identify applied-for gTLD strings that may result in string confusion.
String Similarity Examiners	A panel charged with identifying applied-for gTLD strings that may result in string confusion.
String contention	The scenario in which there is more than one qualified applicant for the same gTLD or for gTLDs that are so similar that detrimental user confusion would be the probable result if more than one were to be delegated to the root zone.
TLD Application System (TAS)	The online interface for submission of applications to ICANN.
Top-level domain (TLD)	TLDs are the names at the top of the DNS naming hierarchy. They appear in domain names as the string of letters following the last (right-most) dot, such as "net" in <a href="http://www.example.net">www.example.net</a> . The TLD administrator controls what second-level names are recognized in that TLD. The administrators of the root domain or root zone control what TLDs are recognized by the DNS.
U-Label	A "U-label" is an IDNA-valid string of Unicode characters, including at least one non-ASCII character, expressed in a standard Unicode Encoding Form, normally UTF-8 in an Internet transmission context.
Uniform Domain Name Dispute Resolution Policy	A policy for resolving disputes arising from alleged abusive registrations of domain names (for example, cybersquatting), allowing expedited administrative

(UDRP)	proceedings that a trademark rights holder initiates by filing a complaint with an approved dispute resolution service provider.
User registration fee	The fee paid by prospective applicants for new TLDs to obtain access to the TLD Application System (TAS).
Whois	Records containing registration information about registered domain names.

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**RESPONDENT'S EXHIBIT**

**ICANN Board-GAC Consultation:**

- **Objection Procedures, including requirements for governments to pay fees**
- **Procedures for the Review of Sensitive Strings**
- **Early warning to applicants: whether a proposed string would be considered controversial or to raise sensitivities (including geographical names)**

**EXPLANATION OF ISSUES/HISTORY**

The GNSO and ICANN Board approved policy recommendations for new gTLDs included four major areas where a third party can raise an objection to the creation of a new gTLD. A new gTLD string should: (i) not be confusingly similar to an existing top-level domain or a Reserved Name (Rec. 2); (ii) not infringe the existing legal rights of others (Rec 3); (iii) not be contrary to generally accepted legal norms relating to morality and public order that are recognized under international principles of law (Rec 6); and (iv) be rejected if there is substantial opposition to it from a significant portion of the community to which the string may be explicitly or implicitly targeted (Rec. 20). See [http://gns0.icann.org/issues/new-gtlds/pdp-dec05-fr-part-08aug07.htm#\\_Toc43798015](http://gns0.icann.org/issues/new-gtlds/pdp-dec05-fr-part-08aug07.htm#_Toc43798015).

The GNSO also recommended that “[d]ispute resolution and challenge processes must be established prior to the start of the [new gTLD] process,” and “[e]xternal dispute providers will give decisions on objections.”

In Brussels in June 2010, and then in a letter to ICANN dated 4 August 2010 (<http://www.icann.org/en/correspondence/gac-to-dengate-thrush-04aug10-en.pdf>), the GAC:

[R]ecommends that community-wide discussions be facilitated by ICANN in order to ensure that an effective objections procedure be developed that both recognizes the relevance of national laws and effectively addresses strings that raise national, cultural, geographic, religious and/or linguistic sensitivities or objections that could result in intractable disputes. These objection procedures should apply to all pending and future TLDs.

In response to the GAC’s recommendation, a cross-community working group was formed to deal specifically with Rec 6 objections (“Rec6 CWG”). The Rec6 CWG has since issued recommendations on both Morality & Public Order, and Community based objections.<sup>1</sup>

(<http://gns0.icann.org/bitcache/27d221c45bd9d8c234246849d716202bacd6f3ee?vid=14699&disposition=attachment&op=download>).

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<sup>1</sup> Suggesting the governments should be able to protect place names, and country, territory or regional language or people descriptions using the community based objection process

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ICANN has responded to many of the working group's recommendations by revising the most current version of the Guidebook and has sought clarification on other recommendations.

Specifically, the newest version of the Guidebook includes the following Rec6 CWG recommended changes:

- A note encouraging applicants to pre-identify possible sensitivities.
- Language indicating that governments may send notifications re: national laws to applicants or via public comment forum (but clarified that this shall not be deemed a formal objection).
- Additional treaties as reference.
- A change in references from "international principles of law" to "principles of international law"
- Language stating that Expert Panel Determinations shall be based on the string itself, but also on stated context if available.
- The name of objection was changed from Morality and Public Order to "Limited Public Interest Objection".

No change was needed with respect to whether governments could utilize the community-based objection process, because that was always contemplated.

Subject to this consultation with the GAC, ICANN expects additional changes to be made, including whether the GAC may file objections on behalf of its members, (although that has not specifically been identified as a GAC request) and whether the GAC or individual Governments should pay dispute resolution fees.

#### **REMAINING AREAS OF DIFFERENCE WITH GAC:**

##### **A. Specific Differences**

1. The GAC suggests that the Independent Objector (IO) could be a possible avenue available to governments. See Letter from the GAC to ICANN, dated 18 August 2009 at <http://www.icann.org/en/correspondence/karklins-to-dengate-thrush-18aug09-en.pdf>

Under the Guidebook, the IO (Independent Objector) shall be independent and if the IO "determines that an objection should be filed, he or she will initiate and prosecute the objection in the public interest." See New gTLD Dispute Resolution Procedures at <http://www.icann.org/en/topics/new-gtlds/draft-dispute-resolution-procedures-clean-12nov10-en.pdf> at section 3.1.5, page 3-7.

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2. The GAC suggests that Governments should not have to pay the same costs as others to file an objection. See Letter from GAC to ICANN, dated 23 September 2010 at <http://www.icann.org/en/correspondence/dryden-to-dengate-thrush-23sep10-en.pdf>. The GAC points to the fact that it has a Bylaws process whereby it can provide advice to the Board for consideration. See Letter from the GAC to ICANN, dated 18 August 2009 at <http://www.icann.org/en/correspondence/karklins-to-dengate-thrush-18aug09-en.pdf>

Since publication of the last version of the Applicant Guidebook, the Board has considered the Rec6 CWG recommendation that the GAC (and ALAC), as a group, should be able to file some or all objections at no or a reduced cost. Although the Board has not reached a formal decision, there is a sense of the Board that it will agree to allow the GAC (and the ALAC) to file objections as a group on behalf of its members so long as doing so is based on some type of consensus of the group members. Further, the Board also thinks that providing some level of funding for objections filed by the GAC (or the ALAC) as a group is an appropriate change to the process.

3. The GAC states that the current objection procedures do not effectively address strings that raise national, cultural, geographic, religious and/or linguistic sensitivities or objections that could result in intractable disputes. See Letter from GAC to ICANN dated 4 August 2010 at <http://www.icann.org/en/correspondence/gac-to-dengate-thrush-04aug10-en.pdf>

Under the Guidebook, protections for these types of names are provided by a series of objections and processes: the requirement for government approval of certain geographical names, Community-based objections (Rec 20), and Limited Public Interest (or Morality & Public Order Rec 6) objections. The last provides that a string will be excluded if there is a determination that an applied-for gTLD string would be contrary to specific principles of international law as reflected in relevant international instruments of law. See Applicant Guidebook, Module 3, section 3.3.4 at <http://www.icann.org/en/topics/new-gtlds/draft-dispute-resolution-procedures-clean-12nov10-en.pdf>. It is recognized that principles from international treaties are incorporated into national laws in a range of different ways, and a panel would need to consider the relevant text in national laws.

4. The GAC suggests that the objection procedures should apply to all pending and future TLDs. See Letter from GAC to ICANN dated 4 August 2010 at <http://www.icann.org/en/correspondence/gac-to-dengate-thrush-04aug10-en.pdf>. ICANN has been asked to note that both the UK and New Zealand take the position that the objection procedures should apply only to new gTLDs.

The Guidebook, and all of the procedures developed for processing applications for and objections to new gTLDs, apply only to new gTLDs and not to existing TLDs or other TLDs (e.g IDN-ccTLDs) that will not be evaluated under the New gTLD Program.

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5. The GAC believes that prior reviews of new gTLD strings can serve as an “early warning” to applicants, providing an opportunity to amend or modify the proposed string prior to proceeding further in the application process or provide opportunities to determine whether the applicant is the sole appropriate manager or relevant authority for that particular string, or whether the proposed string is either too broad to effectively identify a single entity as the relevant authority or appropriate manager, or is sufficiently contentious that an appropriate manager cannot be identified and/or agreed. See Letter from GAC to ICANN, dated 22 November 2010 at <http://www.icann.org/en/correspondence/dryden-to-dengate-thrush-22nov10-en.pdf>

Language has been added to the Guidebook indicating that governments may send notifications regarding national laws directly to applicants or via public comment forum (see Applicant Guidebook, Module 1, section 1.1.2.5 <http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-12nov10-en.pdf>) once the applications are publicly posted. Such notifications are not meant to serve as formal objections or be cause for a modification to an application. It was decided early in the process development that applicants should not be able to amend applications or applied for strings in order to prevent abuses.

#### B. Discussion

##### *Independent Objector (IO)*

As noted above, the GAC suggests that the IO could be a possible avenue available to governments. See Letter from the GAC to ICANN, dated 18 August 2009 at <http://www.icann.org/en/correspondence/karklins-to-dengate-thrush-18aug09-en.pdf>.

The purpose of the IO is to act in the public interest as an independent party to stand in the shoes of a party that did not wish to object. The IO concept was developed partially with Governments in mind. Understanding that Governments may not want to enter into the objection process, the IO could object if the IO independently felt that such an objection would be warranted. All public statements made in response to applications will be available to the IO, who will pay careful attention to the arguments made by any party thinking an objection should be filed in the public interest. An IO may certainly take into account any public statements made by a Government or its representatives in making a determination of whether to file an objection. It is important to note, however, that it will be up to the IO to make the ultimate determination on whether to file an objection.

After understanding specific requirements for assistance or facilitation contemplated by the GAC, there might be other ways to meet the needs described by the GAC without using the IO.

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### *Costs of Objection Process*

As noted above, the GAC suggests that Governments should not have to pay the same costs as others to file an objection. See Letter from GAC to ICANN, dated 23 September 2010 at <http://www.icann.org/en/correspondence/dryden-to-dengate-thrush-23sep10-en.pdf>. At present there is no provision in the Applicant Guidebook for relief from dispute resolution fees for governments or any other objectors. Fees are paid directly to the dispute resolution providers.

As noted in his letter to the GAC on 23 September 2010 (<http://www.icann.org/en/correspondence/dryden-to-dengate-thrush-23sep10-en.pdf>), Peter Dengate Thrush stated:

The Board discussed the GAC's position that governments should not be required to pay a fee for raising objections to new gTLD applications, and does not agree with the GAC on this point. It is the Board's view that governments that file objections should be required to cover costs of the objection process just like any other objector; the objection process will be run on a cost-recovery and loser-pays basis (so the costs of objection processes in which governments prevail will be borne by applicants). How would the dispute resolution process be funded: a speculative increase in application fees or increased fees to gTLD registrants? Either of these cases or others seem difficult to implement and unfair.

However, as stated above, the Board is presently thinking that providing some level of funding for objections filed by the GAC (or the ALAC) as a group is an appropriate change to the process, so long as the decision to bring the objections is based on a consensus of GAC (or ALAC) members, and not just one or a few members.

Further, with respect to the GAC's statement that it has the ability to provide public policy advice to the Board (see Letter from the GAC to ICANN, dated 18 August 2009 at <http://www.icann.org/en/correspondence/karklins-to-dengate-thrush-18aug09-en.pdf>), ICANN's Chairman noted in his letter to the GAC on 22 September 2009 (<http://www.icann.org/en/correspondence/dengate-thrush-to-karklins-22sep09-en.pdf>) that:

Governments that are members of the GAC have a mechanism to provide advice to ICANN's Board, in accordance with ICANN's Bylaws; however, it is not clear that Bylaw was intended to provide an avenue for governments to provide advice on operational matters of this nature. The ICANN Board wishes to have a neutral, expert determination, based upon certain published standards, when deciding whether to accept an application for a new gTLD or if an objection should be upheld.

*Procedures and Standards for Objections*

The goal of the objection procedures is to provide a path for people to block certain applied-for strings in the new gTLD Program defined in the Policy and provide a predictable, smooth running process. The elements needed to achieve such a goal are: (1) a predictable path for objecting; (2) a dispute resolution process outside of ICANN; (3) dispute resolution panelist with the appropriate expertise; and (4) the clearest and most uniform set of standards possible.

a. Predictable Path: The procedures for filing and the administration of an objection are clearly stated. Further, each selected dispute resolution provider has established, published rules with time frames, established standards and expected fees. Having existing and established rules makes the objection path as predictable as possible.

b. Process outside of ICANN: ICANN does not have the capacity or the expertise to manage the administration of an unknown number of objections. Further, without an independent provider selecting independent experts to issue expert determinations on an objection, ICANN will become embroiled in the facts and circumstances of each and every dispute.

c. Expert Panelists: The goal of having appropriately experienced expert panelists, is to ensure that those issuing determinations on such objections have experience in dispute resolution processes and also in the relevant areas. For Limited Public Interest objections, that experience should include resolving international disputes that involve the subject matter of those likely to be at issue in those type of objections. It is envisioned that such experts include retired or sitting judges on the International Court of Justice, or similar tribunals. The community objection process would similarly require panelists experienced in the relevant community or culture at issue, as well as having relevant linguistic skills.

d. Clear Standards: The standards for both Limited Public Interest and Community-based objections are described in the Applicant Guidebook. See sections 3.4.3 and 3.4.4 in Module 3 of the Applicant Guidebook at <http://www.icann.org/en/topics/new-gtlds/draft-dispute-resolution-procedures-clean-12nov10-en.pdf>

Significant research in numerous jurisdictions in every region of the world was conducted to arrive at the undeniably widely accepted legal norms found in the enumerated grounds set forth in the Rec 6 or Limited Public Interest standard. (See <http://www.icann.org/en/topics/new-gtlds/morality-public-order-30may09-en.pdf> for a summary of that research.)

Expanding the grounds for a Limited Public Interest objection, such as the GAC has suggested (see Letter from GAC to ICANN dated 4 August 2010 at

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<http://www.icann.org/en/correspondence/gac-to-dengate-thrush-04aug10-en.pdf>), could lead to a lack of clarity on the grounds upon which such an objection could be filed or succeed. Note, however, that the already existing Community-based objection could be utilized to resolve many of the disputes arising from national, cultural, geographic religious and/or linguistic sensitivities. Rec 20 reads: “There is substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted. (See Module 1 of the Applicant Guidebook, section 3.1.1. at <http://www.icann.org/en/topics/new-gtlds/draft-dispute-resolution-procedures-clean-12nov10-en.pdf>

Finally, it is important to note that the GNSO’s policy recommendations were limited only to TLDs to be introduced by way of the new gTLD Program. Applying such process to existing or pending TLDs that are not evaluated under the New gTLD Program would require additional policy work by the community.

#### *Early Warning*

As noted above, the GAC believes that prior reviews of new gTLD strings can serve as an “early warning” to applicants, providing an opportunity to amend or modify the proposed string prior to proceeding further in the application process or provide opportunities to determine whether the applicant is the sole appropriate manager or relevant authority for that particular string. See Letter from GAC to ICANN, dated 22 November 2010 at <http://www.icann.org/en/correspondence/dryden-to-dengate-thrush-22nov10-en.pdf> See Letter from GAC to ICANN, dated 22 November 2010 at <http://www.icann.org/en/correspondence/dryden-to-dengate-thrush-22nov10-en.pdf>

There is language in the current version of Module 1 of the Applicant Guidebook at section 1.1.2.5 (<http://www.icann.org/en/topics/new-gtlds/draft-new-gtld-drp-clean-12nov10-en.pdf>) about providing notification to applicants once ICANN has published the applications. Specifically,

Governments may provide a notification using the public comment forum to communicate concerns relating to national laws. However, a government’s notification of concern will not in itself be deemed to be a formal objection. A notification by a government does not constitute grounds for rejection of a gTLD application.

Providing an opportunity for an applicant to amend or modify the proposed string (or to alter the applicant) prior to proceeding further in the application process if receiving such notification could result in substantial abuses of the process. For example, allowing for modification after applications are submitted could lead to the call for opening up the entire application process again and it could seemingly create delays that would unacceptable and render the program stagnant. Applications could become placeholders for applicants to view the marketplace after applications are published and gain an advantage with a modification to their application. While cures for specific

instances can be developed and debated, maintaining a fair environment becomes very difficult or impracticable.

#### **RELEVANT GUIDEBOOK SECTIONS AND OTHER PAPERS**

1. The New gTLD Dispute Resolution Procedure (the “Procedure”) can be found at: <http://www.icann.org/en/topics/new-gtlds/draft-new-gtld-drp-clean-12nov10-en.pdf>
2. Module 1 of the current version of the Applicant Guidebook can be found at <http://www.icann.org/en/topics/new-gtlds/draft-dispute-resolution-procedures-clean-12nov10-en.pdf>
3. Module 3 of the current version of the Applicant Guidebook can be found at: <http://www.icann.org/en/topics/new-gtlds/draft-dispute-resolution-procedures-clean-12nov10-en.pdf>
4. Letter from Peter Dengate Thrush to the GAC on 22 September 2009 can be found at <http://www.icann.org/en/correspondence/dengate-thrush-to-karklins-22sep09-en.pdf>
5. Letter from Peter Dengate Thrush to GAC dated 23 September 2010 can be found at <http://www.icann.org/en/correspondence/dryden-to-dengate-thrush-23sep10-en.pdf>
6. The Rec6 CWG Recommendations can be found at <http://gnso.icann.org/bitcache/27d221c45bd9d8c234246849d716202bacd6f3ee?vid=14699&disposition=attachment&op=download>
7. A summary of research conducted on developing the Rec 6 standards can be found at <http://www.icann.org/en/topics/new-gtlds/morality-public-order-30may09-en.pdf>

**REFERENCE DOCUMENTS: OBJECTION PROCEDURES, INCLUDING  
REQUIREMENTS FOR GOVERNMENTS TO PAY FEES**

**PROCEDURES FOR THE REVIEW OF SENSITIVE STRINGS**

**EARLY WARNING TO APPLICANTS: WHETHER A  
PROPOSED STRING WOULD BE CONSIDERED  
CONTROVERSIAL OR TO RAISE SENSITIVITIES  
(INCLUDING GEOGRAPHICAL NAMES)**

— **SUMMARY OF ACTIONS TAKEN RESPONDING TO GAC AND PUBLIC COMMENTS**

— **CHRONOLOGICAL LISTING OF GAC ADVICE AND COMMENTS ON NEW GTLDS  
AND RESPONSES PROVIDED BY ICANN AND KEY DOCUMENTS PUBLISHED ON  
THE TOPICS**

## **SUMMARY OF ACTIONS TAKEN RESPONDING TO GAC AND PUBLIC COMMENTS**

### **Objection Procedures, including requirements for governments to pay fees**

#### **Procedures for the Review of Sensitive Strings**

#### **Early warning to applicants: whether a proposed string would be considered controversial or to raise sensitivities (including geographical names)**

- Efforts have been made to limit the costs to all parties, including governments, for participation in the objection procedure.
- The procedure includes provisions specifically aimed at reducing complexity and avoiding protracted proceedings. These include electronic filings, limits on length of submissions, time limits for submissions, and opportunities for consolidation of objections.
- The costs of the objection procedure are allocated on a “loser pays” basis. That is, while there is an investment up front, and there are some costs involved in preparing filings, the bulk of the cost is incurred by a party only where they do not prevail in the proceeding.
- ICANN will be proposing that funding for GAC or ALAC objections be made available.
- The Independent Objector has been instituted and may act as a backstop for cases where a group may be unable to file an objection for cost or other reasons.
- It has been indicated that the community objection policy was created to address concerns in the GAC Principles on new gTLDs so that appropriate consideration is given to sensitivities regarding terms of national, cultural, geographic and religious significance.

**THIS TABLE PROVIDES A CHRONOLOGICAL LISTING OF GAC ADVICE AND COMMENTS ON NEW GTLDS AND RESPONSES PROVIDED BY ICANN AND KEY DOCUMENTS PUBLISHED ON THE TOPICS.**

**Objection Procedures, including requirements for governments to pay fees**

**Procedures For The Review Of Sensitive Strings**

**Early warning to applicants: whether a proposed string would be considered controversial or to raise sensitivities (including geographical names).**

GAC Advice and Comments	ICANN Responses and Relevant Documents
<p><b>28 March 2007: GAC Principles regarding New gTLDs</b></p> <p>2.1 New gTLDs should respect:</p> <ul style="list-style-type: none"> <li>a) The provisions of the Universal Declaration of Human Rights<sup>1</sup> which seek to affirm "fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women".</li> <li>b) The sensitivities regarding terms with national, cultural, geographic and religious significance.</li> </ul>	<p><b>ICANN mapping with GNSO Policy Recommendation</b></p> <p><b>2.1a)</b> is addressed by the GNSO Recommendation 6; "Strings must not be contrary to generally accepted legal norms relating to morality and public order that are recognized under international principles of law". The GNSO Principle G is also of relevance in this context, stating that "The string evaluation process must not infringe the applicant's freedom of expression rights that are protected under internationally recognized principles of law". The GNSO Recommendation 6 establishes a ground for objections from third parties to strings proposed by applicants. It is foreseen in the implementation planning that such objections will be handled by a dispute resolution service provider outside of ICANN.</p> <p><b>2.1b)</b> is addressed This principle is addressed by the GNSO Recommendation 20; "An application will be rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be explicitly or implicitly targeted." The Recommendation establishes grounds for objections and subsequent dispute resolution handling, as further developed in GNSO Implementation Guideline P. The GNSO Recommendation 6 is also of relevance here, stating; "Strings must not be contrary to generally accepted legal norms relating to morality and public order that are recognized under international principles of law." See also the comment under 2.2 below.</p>

<sup>1</sup> See <http://www.un.org/Overview/rights.html>

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<p><b>10 March 2009: Comments on V1 of Applicant Guidebook</b></p>	<p><b>24 October 2008: Applicant Guidebook Version 1</b>  <a href="http://www.icann.org/en/topics/new-gtlds/draft-rfp-24oct08-en.pdf">http://www.icann.org/en/topics/new-gtlds/draft-rfp-24oct08-en.pdf</a></p> <p><b>29 October 2008: Explanatory Memo—Morality and Public Order Objection Considerations in New gTLD</b>  <a href="http://www.icann.org/en/topics/new-gtlds/morality-public-order-draft-29oct08-en.pdf">http://www.icann.org/en/topics/new-gtlds/morality-public-order-draft-29oct08-en.pdf</a></p> <p><b>18 February 2009, version 1 Public Comments Analysis Report</b>  <a href="http://www.icann.org/en/topics/new-gtlds/agv1-analysis-public-comments-18feb09-en.pdf">http://www.icann.org/en/topics/new-gtlds/agv1-analysis-public-comments-18feb09-en.pdf</a></p>
<p><b>24 June 2009: Communiqué Sydney</b></p> <p>States among other things:</p> <p>The GAC discussed the Draft Applicant Guidebook version 2 and feels that it does not yet respond to all the concerns that governments have. The GAC notes that considerable work is underway seeking to address several critical yet outstanding issues but the GAC remains concerned about a number of important issues:</p> <ul style="list-style-type: none"> <li>- The complexity and cost of the objection procedure and the implications of the proposed procedure for governments to submit objections, for example, on public order and morality grounds.</li> </ul>	
	<p><b>18 February 2009: Applicant Guidebook Version 2</b>  <a href="http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-18feb09-en.pdf">http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-18feb09-en.pdf</a></p> <p><b>18 February 2009: Explanatory Memo—Description of Independent Objector for the New gTLD Dispute Resolution Process</b>  <a href="http://www.icann.org/en/topics/new-gtlds/independent-objector-18feb09-en.pdf">http://www.icann.org/en/topics/new-gtlds/independent-objector-18feb09-en.pdf</a></p> <p><b>31 May 2009, Summary and analysis of public comments on version 2</b>  <a href="http://www.icann.org/en/topics/new-gtlds/agv2-analysis-public-comments-31may09-en.pdf">http://www.icann.org/en/topics/new-gtlds/agv2-analysis-public-comments-31may09-en.pdf</a></p>
	<p><b>30 May 2009: Excerpts of Applicant Guidebook—Dispute Resolution Procedures</b>  <a href="http://www.icann.org/en/topics/new-gtlds/draft-dispute-resolution-procedures-30may09-en.pdf">http://www.icann.org/en/topics/new-gtlds/draft-dispute-resolution-procedures-30may09-en.pdf</a></p> <p><b>30 May 2009: Explanatory Memo—Standard for Morality and Public Order</b></p>

	<p>research <a href="http://www.icann.org/en/topics/new-gtlds/morality-public-order-30may09-en.pdf">http://www.icann.org/en/topics/new-gtlds/morality-public-order-30may09-en.pdf</a></p> <p><b>30 May 2009: Explanatory Memo—Proposed ICANN Registry Restrictions Dispute Resolution Procedure</b> <a href="http://www.icann.org/en/topics/new-gtlds/rrdrp-30may09-en.pdf">http://www.icann.org/en/topics/new-gtlds/rrdrp-30may09-en.pdf</a></p>
<p><b>18 August 2009: Comments on V2 of APPLICANT GUIDEBOOK</b> GAC notes sensitivities with regard to terms with national, cultural, geographic and religious significance. Serious concerns about the practical modalities for address objections on these grounds, including ICANN’s proposal to establish a panel of three judicial experts which may not fully take account of cultural and other national and differences in legal interpretation as to what is morally offensive or threatening to public order. More work is required on costs and the ability to object, noting that public interest groups may wish to object but may be unable to do so due to the costs involved. Governments should not have to follow the same procedures and pay the same costs as others. It is inappropriate for ICANN to require a public body to incur the same costs or subject itself to the limitations associated with a formal objection process primarily designed for non-governmental stakeholders. ICANN bylaws provide a more appropriate mechanism for the GAC or a member of the GAC to provide advice directly to the Board in issues of public policy. Noted that public comment is an avenue for governments and the Independent Objector could also be a possible avenue available to governments. The IO might also consider representations from governments at no cost to Them. Invited Board to include sub procedures in Applicant Guidebook version 3. Also points out that in many cases governments might already have to bear the costs associated with industry stakeholder and cross-government consultation, and increase their monitoring of the application process more generally just to make sure they are aware of the issues raised by the applications for new gTLDs.</p>	<p><b>22 September 2009: Reply from ICANN Chairman</b> <a href="http://www.icann.org/en/correspondence/dengate-thrush-to-karklins-22sep09-en.pdf">http://www.icann.org/en/correspondence/dengate-thrush-to-karklins-22sep09-en.pdf</a></p> <p>With regard to the issues raised regarding procedure and cost, the New gTLD Dispute Resolution Procedure (the “Procedure”) was designed to be a well, defined, smooth procedure. The procedures can be found at <a href="http://www.icann.org/en/topics/new-gtlds/draft-dispute-resolution-procedure-18feb09-en.pdf">http://www.icann.org/en/topics/new-gtlds/draft-dispute-resolution-procedure-18feb09-en.pdf</a> and are summarized in Module 3 of the Guidebook. The Procedure includes provisions that are specifically aimed at reducing complexity and avoiding protracted proceedings, such as:</p> <ul style="list-style-type: none"> <li>▪ Electronic filings (Article 6(a));</li> <li>▪ Limits upon the length of written submissions (Articles 8(b) &amp; 11(e));</li> <li>▪ Short time limits for submissions and other steps in the procedure (Articles 7(a), 7(e), 9(a), 10(a), 11(b), 13(a), 17(b), &amp; 21(a));</li> <li>▪ Consolidation of objections (Article 12);</li> <li>▪ Strict limits upon document production (Article 18); and</li> <li>▪ Strict limits upon hearings (Article 19).</li> </ul> <p>ICANN would welcome specific suggestions for improving the Procedure. However, the benefits that may be derived from further reducing the complexity and duration of the proceedings must be balanced against the panel’s duty to ensure that the parties are treated with equality and that each party is given a reasonable opportunity to present its position (Procedure, Article 4(e)).</p> <p>It is foreseen that morality and public order objections will be heard and decided by panels of experts who are eminent jurists of international reputation. The panels will comprise three experts, in order to ensure that diverse backgrounds and perspectives are present in the Panel. See Procedure, Article 13(b)(iii). Such proceedings will necessarily involve a certain level of costs, for example, to cover</p>

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the time and costs associated with engaging the eminent jurists who serve on the panel.

It is difficult to predict with accuracy whether the costs of the objection procedure will prove to be a barrier to legitimate objections; however, it is felt that the existence of a fee to lodge an objection is necessary as a deterrent to frivolous objections. Interested parties may pool their resources to finance an objection that they consider to be legitimate and important. The rule that the prevailing party will be fully reimbursed for the filing fee and advance payment of costs that it paid (Article 14(e)) is intended to lessen the financial burden upon parties that file a well-founded objection. Finally, it should be recalled that the Independent Objector may also file an objection where, for various reasons (including cost), no other objection had been filed.

Considerable legal research was undertaken which examined the rules of public policy, as they apply to freedom of speech and encompassed the treatment of names of that may have national, cultural, geographic and religious sensitivities in a representative sample of countries, which included Brazil, Egypt, France, Hong Kong, Malaysia, South Africa, Switzerland and the United States of America. The possibility of objecting to an applied-for gTLD on the grounds of morality and public order is derived from the GNSO's Recommendation No. 6, which states, in part, that "Strings must not be contrary to generally accepted legal norms relating to morality and public order that are recognized under international principles of law." Various competing interests are potentially involved, for example the rights of freedom of expression versus sensitivities associated with terms of national, cultural, geographic and religious significance. While freedom of expression in gTLDs is not absolute, those claiming to be offended on national, cultural, geographic or religious grounds do not have an automatic veto over gTLDs. The standards summarized by Recommendation No. 6 indicate that a morality and public order objection should be based upon norms that are widely accepted in the international community. It is felt that a rule that did not require wide acceptance would facilitate pressure to align the standards with those imposed by the most repressive regimes. In addition to the Draft Applicant Guidebook (Module 3), ICANN has published explanatory memoranda, dated 29 October 2008 <http://www.icann.org/en/announcements/announcement-29oct08-en.htm> and 30 May 2009 <http://www.icann.org/en/topics/new-gtlds/morality-public-order-30may09-en.pdf>, that set out the specific standards that have been adopted for such objections and the legal research upon which those standards is based.

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	<p>ICANN considers that a rule-based dispute resolution procedure, leading to a reasoned expert determination (that will normally be published) by three jurists of international renown, is an appropriate method of addressing and resolving disputes arising from objections based upon morality or public order. Indeed, no viable alternative has been suggested.</p> <p>The Draft Applicant Guidebook does require governments to follow the same procedures and to pay the same costs as other objectors; however, it must be emphasised that the process has been developed to provide more than one avenue for governments, or anyone else, to raise concerns about an application. It has become quite common for governments and other public entities to participate in international dispute resolution proceedings with private parties (e.g., arbitration and other alternative dispute resolution procedures). For example, international arbitration is generally stipulated for the resolution of disputes between States and private investors under bilateral investment treaties (BITs). Such arbitrations may be conducted under rules such as those of the International Centre for the Settlement of Investment Disputes (ICSID), the United Nations Commission on International Trade Law (UNCITRAL) or the International Chamber of Commerce (ICC). Recent years have seen a great increase in the conclusion of BITs. The United Nations Conference on Trade and Development (UNCTAD) has reported that the number of BITs increased dramatically in the 1990s, from 385 in 1989 to a total of 2,265 in 2003, involving 176 countries.<sup>2</sup> The total reached 2,676 by the end of 2008.<sup>3</sup></p> <p>Governments that are members of the GAC have a mechanism to provide advice to ICANN’s Board, in accordance with ICANN’s Bylaws; however, it is not clear that Bylaw was intended to provide an avenue for governments to provide advice on operational matters of this nature. The ICANN Board wishes to have a neutral, expert determination, based upon certain published standards, when deciding whether to accept an application for a new gTLD or if an objection should be upheld.</p> <p>Finally, it should be recalled again in this context that the Independent Objector may file an objection against an applied-for gTLD in cases where governments (and others) choose not to do so. The Independent Objector will be entitled to take into</p>
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<sup>2</sup> Source: [http://www.unctadxi.org/templates/Page\\_\\_\\_1007.aspx](http://www.unctadxi.org/templates/Page___1007.aspx) (last visited 25 August 2009).

<sup>3</sup> *Recent Developments in International Investment Agreements (2008–June 2009)*, p. 2, IIA Monitor No. 3 (2009), (United Nations, New York and Geneva, 2009). Available at: <http://www.unctad.org/Templates/Startpage.asp?intItemID=2310> (last visited 25 August 2009).

	<p>account comments made by any person or entity (including, of course, governments) when deciding whether to file an objection.</p>
	<p>12 March 2010, Status report on EOI; Vertical Integration; Trademark Clearinhouse and Uniform Rapid Suspension System; Post Delegation Dispute resolution Procedure – Legal Rights; Registry Restrictions Dispute Delegation Procedure – Community; IDN 3 character requirement; Communications Plan  <a href="http://www.icann.org/en/minutes/resolutions-12mar10-en.htm#4">http://www.icann.org/en/minutes/resolutions-12mar10-en.htm#4</a>                  22 April 2010, New gTLDs – reporting against new project plan  <a href="http://www.icann.org/en/minutes/minutes-22apr10-en.htm">http://www.icann.org/en/minutes/minutes-22apr10-en.htm</a>                  Board Briefing Materials:  <a href="#">One</a> [PDF, 2.66 MB]  <a href="#">Two</a> [PDF, 1.61 MB]  <a href="#">Three</a> [PDF, 4.95 MB]</p>
	<p><b>4 October 2009: Applicant Guidebook Version 3</b>  <a href="http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-04oct09-en.pdf">http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-04oct09-en.pdf</a>   <b>15 February 2010, Summary and analysis comments version 3</b>  <a href="http://www.icann.org/en/topics/new-gtlds/summary-analysis-agv3-15feb10-en.pdf">http://www.icann.org/en/topics/new-gtlds/summary-analysis-agv3-15feb10-en.pdf</a></p>
<p><b>10 March 2010: Comments on V3 of APPLICANT GUIDEBOOK</b>                  Objection mechanism should be improved, included to ensure that objection fees are cost based rather than set a high deterrence level and governments should not be subject to paying fees. Restates previous position that GAC members can provide advise directly to the ICAN Board as foreseen in the bylaws, and not be required to subject objections to an independent third party service provider.</p>	<p><b>5 August 2010:Reply from ICANN Chairman</b>  <a href="http://www.icann.org/en/correspondence/dengate-thrush-to-dryden-05aug10-en.pdf">http://www.icann.org/en/correspondence/dengate-thrush-to-dryden-05aug10-en.pdf</a>                   I reiterate my response of 22 September 2009, to the GAC on this issue:   <i>“It is difficult to predict with accuracy whether the costs of the objection procedure will prove to be a barrier to legitimate objections; however, it is felt that the existence of a fee to lodge an objection is necessary as a deterrent to frivolous objections. Interested parties may pool their resources to finance an objection that they consider to be legitimate and important. The rule that the prevailing party will be fully reimbursed for the filing fee and advance payment of costs that it paid (Article 14(e)) is intended to lessen the financial burden upon parties that file a well-founded objection. Finally, it should be recalled that the Independent Objector may also file an objection where, for various reasons (including cost), no other objection had been filed.”</i>   <i>“Governments that are members of the GAC have a mechanism to provide advice</i></p>

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	<p><i>to ICANN’s Board, in accordance with ICANN’s Bylaws; however, it is not clear that Bylaw was intended to provide an avenue for governments to provide advice on operational matters of this nature. The ICANN Board wishes to have a neutral, expert determination, based upon certain published standards, when deciding whether to accept an application for a new gTLD or if an objection should be upheld.”</i></p> <p>Reviewing that response and the issues posed in your letter, I would add the following. ICANN (and the community) devoted substantial resources to develop the policy and implementation models to protect important interests through an objection based dispute resolution benefit. Still, specific suggestions for improvements are encouraged and I understand some Supporting Organizations and Advisory Committees are forming groups to study the issue. ICANN staff will support that work. The costs of that process are paid directly to the dispute resolution provider – no fees are added as a deterrent to potential objectors. In fact, one intended result of the process is to discourage applicants of controversial names that may infringe upon those important interests.</p> <p>We note that governments pay fees for other services, enter into agreements, and pursue conflict resolution. We do not believe that governments should be afforded special consideration by exempting them from paying fees associated with filing an objection. To do so would result in an inflation of costs for other objectors to cover the costs incurred by government requests. This is different, however, from arrangements to assist impecunious governments. If the GAC is able to provide the principle on which they base their request for exemption, it will be considered for inclusion into the procedure.</p>
<p><b>4 August 2010: Comments on Morality and Public Order</b></p> <p>The GAC firmly believes that the absence of any controversial strings in the current universe of top level domains (TLDs) to date contributes directly to the security and stability of the domain name and addressing system (DNS) and the universal resolvability of the system. As a matter of principle, and consistent with Sections 3(b) and 8(a) of the Affirmation of Commitments and the core values contained in Article 1, Section 2 of ICANN’s Bylaws, the GAC believes that the objective of stability, security and universal resolvability must be preserved in the course of expanding the DNS with the addition of new top level domains to the root. The GAC urges the Board to ensure that his fundamental value, which preserves the integrity of the DNS, is incorporated as an element of the public interest standard to which it has committed in the Affirmation of Commitments.</p>	<p><b>23 November 2010: Reply from ICANN Chairman</b></p> <p><a href="http://www.icann.org/en/correspondence/dengate-thrush-to-dryden-23nov10-en.pdf">http://www.icann.org/en/correspondence/dengate-thrush-to-dryden-23nov10-en.pdf</a></p> <p>In accordance with the GAC request, ICANN has facilitated the cross-community discussions on the process for addressing the GNSO policy recommendation that, “[s]trings must not be contrary to generally accepted legal norms relating to morality and public order that are recognized under international principles of law.”</p> <p>The Board welcomes the report from the Recommendation 6 Working Group and has requested staff to undertake analysis of the report to determine how recommendations could be incorporated into the Guidebook and conduct a</p>

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In this regard, the GAC believes that procedures to identify strings that could raise national, cultural, geographic, religious and/or linguistic sensitivities or objections are wanted so as to mitigate the risks of fragmenting the DNS that could result from the introduction of controversial strings.

While the GAC appreciates that the proposed objection procedure on “Morality and Public Order” grounds included in DAGv4 was intended to satisfy the concern noted above, the GAC strongly advises the Board to replace the proposed approach to addressing objections to new gTLDs applications based on “morality and public order” concerns with an alternative mechanism for addressing concerns related to objectionable strings. The terms “morality and public order” are used in various international instruments, such as the Paris Convention for the Protection of Industrial Property, the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights (ICCPR). Generally, these terms are used to provide the basis for countries to either make an exemption from a treaty obligation or to establish by law limitations on rights and freedoms at the national level. Judicial decisions taken on these grounds are based on national law and vary from country to country. Accordingly, the GAC advises that using these terms as the premise for the proposed approach is flawed as it suggests that there is an internationally agreed definition of “morality and public order”. This is clearly not the case.

The GAC therefore recommends that community-wide discussions be facilitated by ICANN in order to ensure that an effective objections procedure be developed that both recognizes the relevance of national laws and effectively addresses strings that raise national, cultural, geographic, religious and/or linguistic sensitivities or objections that could result in intractable disputes. These objection procedures should apply to all pending and future TLDs.

consultation with the Working Group before the Cartagena meeting with the aim of finding additional areas of agreement for incorporation into the Applicant Guidebook.

I wish to make a few points regarding the GAC letter of 4 August on this topic. I do not consider this to be a stability issue per se but rather a policy issue where ICANN is implementing the consensus position developed by the GNSO. There are controversial names delegated and registered now at different levels of the domain name system that do not result in security or stability issues.

Additionally, the new gTLD implementation to date has addressed the issues described in the Affirmation of Commitments: competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection. The issues raised by the GAC are neither stability / security nor AoC issues – but they merit the full attention of the community.

The solution that appears in version 4 of the Applicant Guidebook was developed following extensive legal research that examined restrictions in a representative sample of countries, which included Brazil, Egypt, France, Hong Kong, Malaysia, South Africa, Switzerland and the United States of America. Various competing interests are potentially involved, for example the rights of freedom of expression versus sensitivities associated with terms of national, cultural, geographic and religious significance. While freedom of expression in gTLDs is not absolute, those claiming to be offended on national, cultural, geographic or religious grounds do not have an automatic veto over gTLDs. The standards summarized by Recommendation No. 6 indicate that a morality and public order objection should be based upon norms that are widely accepted in the international community.

In addition to the Draft Applicant Guidebook (Module 3), ICANN has published explanatory memoranda, dated 29 October 2008 <http://www.icann.org/en/announcements/announcement-29oct08-en.htm> and 30 May 2009 <http://www.icann.org/en/topics/new-gtlds/morality-public-order-30may09-en.pdf>, that set out the specific standards that have been adopted for such objections and the legal research upon which those standards is based.

Importantly, in addition to the Morality and Public Order objection and dispute resolution processes, the Community Objection standards were developed to address potential registration of names that have national, cultural, geographic and religious sensitivities.

I understand that some GAC members have expressed dissatisfaction with this

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	<p>process as it was first described in version 2 of the Guidebook. The treatment of this issue in the new gTLD context, was the result of a well-studied and documented process which involved consultations with internationally recognized experts in this area. Advice containing thoughtful proposals for amending the treatment of this issue that maintains the integrity of the policy recommendation would be welcomed. The expression of dissatisfaction without a substantive proposal, does not give the Board or staff a toehold for considering alternative solutions. While the report of the recently convened working group still does not constitute a policy statement as conceived in the ICANN bylaws, ICANN staff and Board are working to collaborate with the community to adopt many of the recommendations.</p>
	<p><b>28 May 2010: Applicant Guidebook Version 4</b>  <a href="http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-28may10-en.pdf">http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-28may10-en.pdf</a></p> <p><b>28 May 2010: Explanatory Memo—“Quick Look” Procedure for Morality and Public Order Objections</b>  <a href="http://www.icann.org/en/topics/new-gtlds/morality-public-order-quick-look-28may10-en.pdf">http://www.icann.org/en/topics/new-gtlds/morality-public-order-quick-look-28may10-en.pdf</a></p> <p><b>12 November 2010: Summary and analysis of comments version 4</b>  <a href="http://www.icann.org/en/topics/new-gtlds/summary-analysis-agv4-12nov10-en.pdf">http://www.icann.org/en/topics/new-gtlds/summary-analysis-agv4-12nov10-en.pdf</a></p>
<p><b>23 September 2010: Comments on V4 of AG</b>  Reiterates its position that governments should not be required to pay a fee for raising objections to new gTLD applications. There are a number of reasons why sovereign nations should not pay fees to object to strings which they consider to be objectionable:</p> <ul style="list-style-type: none"> <li>- sovereign nations are not protecting a commercial interest (as opposed, for example, to the protection of trademarks) but are instead protecting their national interests and the public interest (as they see it);</li> <li>- the cost of blocking a controversial gTLD for a Government may be less than the upfront cost of opposing a controversial gTLD. If ICANN’s policy objective is for one unified Internet, it should ensure that sovereign nations have low costs in raising their concerns about individual gTLDs in the first instance; and</li> <li>- as a general principle of public policy, the group responsible for causing a regulatory response should bear the cost of that regulatory response. This is</li> </ul>	<p><b>23 November 2010: Reply from ICANN Chairman</b>  <a href="http://www.icann.org/en/correspondence/dengate-thrush-to-dryden-23nov10-en.pdf">http://www.icann.org/en/correspondence/dengate-thrush-to-dryden-23nov10-en.pdf</a></p> <p>The criteria for community objections was created with the possible objections to place names in mind and as such the objection process “appropriately enables governments to use this.” The <i>New gTLD Dispute Resolution Procedure</i> is outlined in an Attachment to Module 3, pp P-1 to P-11 and was also developed so that it is equally accessible to those who wish to utilize the process.</p> <p>The Board discussed the GAC’s position that governments should not be required to pay a fee for raising objections to new gTLD applications, and does not agree with the GAC on this point. It is the Board’s view that governments that file objections should be required to cover costs of the objection process just like any other objector; the objection process will be run on a cost-recovery and loser-pays basis (so the costs of objection processes in which governments prevail will be</p>

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<p>consistent with the principle that the collective (i.e. tax payers, citizens) does not bear a burden caused by special interest groups, without a substantial and identifiable public benefit.</p>	<p>borne by applicants). How would the dispute resolution process be funded: a speculative increase in application fees or increased fees to gTLD registrants? Either of these cases or others seem difficult to implement and unfair.</p>
	<p><b>25 September 2010, Board Retreat Trondheim</b>  <a href="http://www.icann.org/en/minutes/resolutions-25sep10-en.htm">http://www.icann.org/en/minutes/resolutions-25sep10-en.htm</a></p> <p><b>GNSO New gTLD Recommendation 6 Objection Process</b>          The Board acknowledges receipt of the Rec6CWG report. This is a difficult issue, and the work of the community in developing these recommendations is appreciated. The Board has discussed this important issue for the past three years. The Board agrees that ultimate responsibility for the new gTLD program rests with the Board. The Board, however, wishes to rely on the determinations of experts regarding these issues.          The Board will accept the Rec6 CWG recommendations that are not inconsistent with the existing process, as this can be achieved before the opening of the first gTLD application round, and will work to resolve any inconsistencies. Staff will consult with the Board for further guidance as required.</p> <p>Board Briefing Materials:  <a href="#">One</a> [PDF, 3.23 MB]  <a href="#">Two</a> [PDF, 2.03 MB]  <a href="#">Three</a> [PDF, 816 KB]  <a href="#">Four</a> [PDF, 240 KB]  <a href="#">Five</a> [PDF, 546 KB]</p>
	<p><b>12 November 2010: Proposed Final Applicant Guidebook</b>  <a href="http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-12nov10-en.pdf">http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-12nov10-en.pdf</a></p> <p><b>12 November 2010: Explanatory Memo—Morality &amp; Public Order</b>  <a href="http://www.icann.org/en/topics/new-gtlds/explanatory-memo-morality-public-order-12nov10-en.pdf">http://www.icann.org/en/topics/new-gtlds/explanatory-memo-morality-public-order-12nov10-en.pdf</a></p>
<p><b>22 Nov 2010: Interim GAC comments relating to new gTLDs</b>          The GAC notes the work undertaken by the cross constituency Recommendation 6 Working Group which was set up to address the concerns raised by the GAC and ALAC during the Brussels meeting and in whose deliberations three GAC members participated. The GAC will be interested in the Board’s views of the recommendations contained in the report of the Group. The GAC believes it is necessary that further discussion and development of string review processes to</p>	

<p>identify those proposed strings that are: contrary to national law, policy or regulation (for example, several governments restrict the registration of certain terms of their ccTLDs); and/or that refer to religions, ethnicity, languages, or other cultural identifiers that might raise national sensitivities. The GAC believes the integration of prior reviews into the implementation of new gTLDs can serve as an “early warning” to applicants, providing an opportunity to amend or modify the proposed string prior to proceeding further in the application process. The prior reviews would also provide opportunities to determine whether the applicant is the sole appropriate manager or relevant authority for that particular string, or whether the proposed string is either too broad to effectively identify a single entity as the relevant authority or appropriate manager, or is sufficiently contentious that an appropriate manager cannot be identified and/or agreed.</p>	
<p><b>9 December 2010: Communiqué Cartagena</b> That the GAC will provide the Board at the earliest opportunity with a list or "scorecard" of the issues which the GAC feels are still outstanding and require additional discussion between the Board and the GAC. These include:</p> <ul style="list-style-type: none"> <li>• The objection procedures including the requirements for governments to pay fees;</li> <li>• Procedures for the review of sensitive strings;</li> <li>• The need for an early warning to applicants whether a proposed string would be considered controversial or to raise sensitivities (including geographical names).</li> </ul> <p>----</p> <p>The GAC commends the initiative of the Recommendation 6 Cross Constituency Working Group (Rec6CCWG).</p> <p>The GAC will take into account the Board’s responses to the recommendations of the Rec6CWG in its further consideration of gTLD issues.</p> <p>Consistent with the GAC’s letter of 22 November 2010, the GAC anticipates working with the Board and other members of the ICANN constituencies, in particular the ALAC, in further consideration of the integration of prior reviews to serve as an early warning to applicants whether a proposed string would be considered controversial or to raise sensitivities.</p>	<p><b>10 December 2010, Board meeting</b></p> <p>New gTLD Remaining Issues <a href="http://www.icann.org/en/minutes/resolutions-10dec10-en.htm#2">http://www.icann.org/en/minutes/resolutions-10dec10-en.htm#2</a></p> <p>Resolved (2010.12.10.21), the Board:</p> <ol style="list-style-type: none"> <li>1. Appreciates the GAC's acceptance of the Board's invitation for an inter-sessional meeting to address the GAC's outstanding concerns with the new gTLD process. The Board anticipates this meeting occurring in February 2011, and looks forward to planning for this meeting in consultation and cooperation with the GAC, and to hearing the GAC's specific views on each remaining issue.</li> <li>2. Directs staff to make revisions to the guidebook as appropriate based on the comments received during the public comment period on the Proposed Final Applicant Guidebook and comments on the New gTLD Economic Study Phase II Report.</li> <li>3. Invites the Recommendation 6 Community Working Group to provide final written proposals on the issues identified above by 7 January 2011, and directs staff to provide briefing materials to enable the Board to make a decision in relation to the working group's recommendations.</li> <li>4. Notes the continuing work being done by the Joint Applicant Support Working Group, and reiterates the Board's 28 October 2010 resolutions of thanks and encouragement.</li> <li>5. Directs staff to synthesize the results of these consultations and comments, and to prepare revisions to the guidebook to enable the Board to make a decision on the launch of the new gTLD program as soon</li> </ol>

	<p>as possible.</p> <p>6. Commits to provide a thorough and reasoned explanation of ICANN decisions, the rationale thereof and the sources of data and information on which ICANN relied, including providing a rationale regarding the Board's decisions in relation to economic analysis.</p> <p>7. Thanks the ICANN community for the tremendous patience, dedication, and commitment to resolving these difficult and complex issues.</p>
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**RESPONDENT'S EXHIBIT**

## **GAC indicative scorecard on new gTLD outstanding issues listed in the GAC Cartagena Communiqué**

- scorecard to serve as the basis of the GAC approach to Brussels ICANN Board/GAC consultation meeting 28 February-1 March 2011

### **Introduction**

The scorecard below represents the considered efforts of the GAC to distil the key elements of consensus advice regarding the introduction of new gTLDs it has been providing the ICANN Board since March, 2007.

As the GAC noted in its Cartagena Communiqué, the GAC's initial advice, presented in the form of Principles, pre-dated both the completion of the GNSO's Recommendations on new gTLDs and the ICANN Board's subsequent adoption of those Recommendations in June, 2008. The GAC has sought from the outset of its deliberations regarding the public policy aspects related to the introduction of new gTLDs to contribute to the bottom-up, consensus-based policy development process within ICANN. As per the ICANN Bylaws, the GAC provides advice directly to the ICANN Board. Once the GAC forwards its advice to the ICANN Board, the GAC understands that it is within the ICANN Board's remit to instruct ICANN staff to take the GAC's advice into account in the development of the implementation plan for the introduction of new gTLDs. The GAC therefore welcomes the opportunity presented by the ICANN Board's agreement to hold a meeting with the GAC to review its longstanding and outstanding concerns regarding ICANN's proposed implementation plan for the introduction of new gTLDs. From the GAC's perspective, the Brussels meetings are not only an appropriate but a critical next step in ensuring the perspectives of governments are fully taken into account in the ICANN private sector-led, multi-stakeholder model that ICANN represents.

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## 1. The objection procedures including the requirements for governments to pay fees

### **Recommended GAC Advice:**

The GAC advises the ICANN Board to instruct ICANN staff to delete the procedures related to “Limited Public Interest Objections” in Module 3.

### **Explanation:**

Although the new heading has been renamed from “Morality and Public Order Objections”, the body of the text remains unchanged and contains the same fundamental flaws which can only be remedied through deletion.

Specifically, the requirement that governments pay fees and must be bound by determinations by the International Centre for Expertise of the International Chamber of Commerce, which will in turn be guided by the findings of “three experts recognized as eminent jurists of international reputation”, is contrary to the sovereign right of governments to interpret and apply principles of international law on a country-by-country basis. Governments cannot be bound by the determinations of private individuals or organizations on matters that pertain to national law.

The requirement is also inconsistent with the provisions in ICANN’s Bylaws that call for governments to provide public policy advice to the ICANN Board through the Governmental Advisory Committee.

Lastly, there are no “generally accepted legal norms relating to morality and public order that are recognized under international principles of law” (Module 3, Article 2, e, iii), nor is it feasible to expect that any panel of “experts” could reach a determination whether a particular proposed new gTLD string would be considered objectionable on such grounds.

## 2. Procedures for the review of sensitive strings

### ***1. String Evaluation and Objections Procedure***

The GAC advises the ICANN Board to instruct ICANN staff to amend the following procedures related to the Initial Evaluation called for in Module 2 to include review by governments, via the GAC.

At the beginning of the Initial Evaluation Period, ICANN will provide the GAC with a detailed summary of all new gTLD applications. Any GAC member may raise an objection to a proposed string for any reason.

The GAC will consider any objection raised by a GAC member or members, and agree on advice to forward to the ICANN Board.

GAC advice could also suggest measures to mitigate GAC concerns. For example, the GAC could advise that additional scrutiny and

conditions should apply to strings that could impact on public trust (e.g. ‘.bank’).

In the event the Board determines to take an action that is not consistent with GAC advice pursuant to Article XI Section 2.1 j and k, the Board will provide a rationale for its decision.

**Explanation:**

This proposal meets a number of compelling goals. First it provides governments with a more appropriate mechanism than the “Limited Public Interest Objections” procedure to communicate objections via the GAC. It is also intended to diminish the potential for blocking of top level domain strings considered objectionable by governments, which harms the architecture of the DNS and undermines the goal of universal resolvability.

Affording governments the early opportunity, through the GAC, to provide advice to the ICANN Board about particular proposed strings is supportive of ICANN’s commitment to ensure that its decisions are in the global public interest and represent community consensus.

**2. *Expand Categories of Community-based Strings***

The GAC advises the ICANN Board to instruct ICANN staff to amend the provisions and procedures contained in Modules 1 and 3 to clarify the following:

1. “Community-based strings” include those that purport to represent or that embody a particular group of people or interests based on historical, cultural or social components of identity, such as nationality, race or ethnicity, religion, belief, culture or particular social origin or group, political opinion, membership of a national minority, disability, age, and/or a language or linguistic group (non exhaustive). In addition, those strings that refer to particular sectors, such as those subject to national regulation (such as .bank, .pharmacy) or those that describe or are targeted to a population or industry that is vulnerable to online fraud or abuse, should also be considered “community-based” strings.
2. Applicants seeking such strings should be required to affirmatively identify them as “community-based strings” and must demonstrate their affiliation with the affected community, the specific purpose of the proposed TLD, and –when opportune– evidence of support or non-objection from the relevant authority/ies that the applicant is the appropriate or agreed entity for purposes of managing the TLD.
3. In the event the proposed string is either too broad to effectively identify a single entity as the relevant authority or appropriate manager, or is sufficiently contentious that an appropriate manager cannot be identified and/or agreed, the application should be rejected.
4. The requirement that objectors must demonstrate “material detriment to the broader Internet community” should be amended to reflect simply “material detriment”, as the former represents an extremely vague standard that may prove impossible to

satisfy.

5. Individual governments that choose to file objections to any proposed “community-based” string should not be required to pay fees.

**Explanation:**

The proposed approach would remedy the failure in the draft Applicant Guidebook to incorporate the GAC’s previous advice that ICANN’s new gTLD process should respect the legitimate interests of governments regarding terms with national, cultural, geographic and religious significance. It also anticipates the strong possibility that there will be proposed new gTLD strings for which an appropriate manager cannot be identified and/or agreed, which should cause the application to be rejected as a community-based string. It corrects an impossibly vague standard of “detriment to the broader Internet community” with a more practical and realistic standard of “material detriment” to the community in question. Finally, this proposal recognizes the right of governments to protect their perceived national interests through the Community objections process without the obligation to pay fees.

### **3. Root Zone Scaling**

**Recommended GAC Advice:**

1. The Board should continue implementing a monitoring and alerting system and ensure a) that ICANN can react predictably and quickly when there are indicators that new additions and changes are straining the root zone system, and b) that the processes and possible resulting restorative measures that flow from its results are fully described in the Application Guidebook before the start of the first application round.
2. The Board commits to defer the launch of a second round or batch of applications unless an evaluation shows that there are indications from monitoring the root system etc. that a first (limited) round did not in any way jeopardize the security and stability of the root zone system.
3. The Board commits to make the second round or batch of applications contingent on a clean sheet from full technical and administrative assessment of impact of the first round with recommendations which should go out to public comment for approval.
4. The Board commits to avoid the possibility that other activities will be impacted by the possible diversion of resources to processing new gTLD applications.
5. The Board should ensure that ICANN can effectively address the specific needs of applicants from different, perhaps non-English speaking cultures, and with different legal environments.
6. The Board should monitor the pace and effectiveness of ICANN’s management of contract negotiations for new gTLDs in a potential situation of 200 to 300 simultaneous applications and evaluations.
7. The Board is confident that all relevant actors (IANA, root server operators, etc) are sufficiently informed about what is expected from them in terms of work loadings and resources in order to fulfil their respective roles, in particular the pre-

delegation checking, approvals, implementation of potentially 200 to 300 root zone changes a year and expected post-delegation changes.

#### **4. Market and Economic Impacts**

The GAC advises the ICANN Board to instruct ICANN staff to amend the final Draft Applicant Guidebook to incorporate the following:

1. Criteria to facilitate the weighing of the potential costs and benefits to the public in the evaluation and award of new gTLDs.
2. A requirement that new gTLD applicants provide information on the expected benefits of the proposed gTLD, as well as information and proposed operating terms to eliminate or minimize costs to registrants and consumers.
3. Due diligence or other operating restrictions to ensure that Community-based gTLDs will in fact serve their targeted communities and will not broaden their operations in a manner that makes it more likely for the registries to impose costs on existing domain owners in other TLDs.

**Explanation:**

The economic studies conducted by Katz, Rosston and Sullivan contain important findings that the past introduction of new gTLDs provided minimal public benefits in terms of competition for existing gTLDs and relieving name scarcity. The studies further state clearly that the introduction of new gTLDs had imposed costs on intellectual property owners in diluted brand strength, defensive registrations, and other costs associated with protecting their brands.

#### **5. Registry – Registrar Separation**

The GAC advises the ICANN Board to instruct ICANN staff to amend the proposed new registry agreement to restrict cross-ownership between registries and registrars, in those cases where it can be determined that the registry does have, or is likely to obtain, market power. The GAC further advises the ICANN Board that it considers the absence of a thorough and reasoned explanation of its decision in November 2010 to reverse its earlier decision of March 2010 to maintain "strict separation of entities offering registry services and those acting as registrars" and that "no co-ownership will be allowed" to be inconsistent with its commitments under the Affirmation of Commitments.

**Explanation:**

The CRA International report commissioned by ICANN noted that vertical integration between registries and registrars could foster both pre-competitive and anticompetitive outcomes. As the key issue is whether a gTLD has market power, it would only be

appropriate for ICANN to relax or lift restrictions on vertical integration in cases where it is clear that a gTLD faces or will face substantial competition. Such analysis would benefit from consultations with relevant antitrust authorities.

Further, ICANN has committed to provide a thorough and reasoned explanation of ICANN decisions, the rationale thereof and the sources of data and information on which ICANN relies. This has not been done yet to explain how the Board moved from a position in March 2010, as articulated in a Board resolution, of no cross ownership, to the May 31, 2010 staff proposal contained in draft Applicant Guidebook, version 4 of de minimus (i.e., no more than 2%) cross ownership, to the November 5, 2010 decision allowing full cross ownership. ICANN staff have provided an justification for the second decision but not an explanation of why ICANN's position changed so dramatically in the space of 8 months.

## **6. Protection of Rights Owners and consumer protection issue**

### ***1. Rights Protection: Trademark Clearing House (TC)***

#### **GAC Advice**

The GAC proposes the following refining changes that significantly improve the operation and achieve the maximum impact of the TC:

- The TC should be permitted to accept all types of intellectual property rights that are recognized under the national law of the country or countries under which the registry is organized or has its principal place of business. The only mandatory requirement for new registry operators will be to recognize national and supranational trademark registrations issued before June 26, 2008 and court-validated common law trademarks.
- Sunrise services and IP claims should both be mandatory for registry operators because they serve different functions with IP claims serving a useful notice function beyond the introductory phase.
- IP claims services and sunrise services should go beyond exact matches to include exact match plus key terms associated with goods or services identified by the mark ) e.g. “Kodakonlineshop”) and typographical variations identified by the rights holder.
- All trademark registrations of national and supranational effect, regardless of whether examined on substantive or relative grounds, must be eligible to participate in the pre-launch sunrise mechanisms.
- Protections afforded to trademark registrations do not extend to applications for registrations, marks within any opposition period or registered marks that were the subject of successful invalidation, cancellation or rectification proceedings.
- The IP claims service should notify the potential domain name registrant of the rights holder’s claim and also notify the rights holder of the registrant’s application for the domain name.
- The TC should continue after the initial launch of each gTLD.

- Rights holders, registries and registrars should all contribute to the cost of the TC because they all benefit from it.

### **Explanation and argument**

The GAC believes that the TC as currently framed in the Applicant Guidebook needs to be significantly improved because a) there is lack of clarity as to the modalities of the TC process and operation and b) there are problems with its applicability. While the GAC recognizes that the Trademark Clearing House (TC) mechanism was not introduced as a rights protection mechanism but as a cost reduction tool, the GAC believes it can provide effective and efficient means to enable rights holders to submit their trade mark registrations with a single entity rather than with every registry in which they may wish to obtain a second-level registration.

There is also a major inconsistency between Sunrise and IP Claims services because Sunrise services only recognize trademarks that are registered in countries conducting a so-called substantive review or examination. The consequences of this are significant in terms of eligibility. In Europe, for example, all “Community Trademarks” (i.e. any trademark which is pending registration or has been registered in the European Union as a whole rather than on a national level within the EU) and most national trademarks are excluded from the Sunrise service. These amendments would ensure that all trademark registrations could qualify for participation in the pre-launch sunrise mechanism, consistent with existing best practices (e.g. the policies for .eu, .tel, and .asia).

With regard to presentation in the Applicant Guidebook, the GAC recommends that the text could more clearly indicate (perhaps with a flow chart) at what time during the evaluation process, and by what entity, objections to potential trademark infringements should be submitted.

## ***2. Rights Protection: Uniform Rapid Suspension (URS):***

### **GAC Advice:**

- Significantly reduce the timescales. See attached table for proposed changes.
- The URS processes should be streamlined as follows:
  - The complaint should be simplified by replacing the 5,000 word free text limit + unlimited attachments [para 1.2] with a simple pro forma standardised wording with the opportunity for not more than 500 words of freeform text and limit the attachments to copies of the offending website.
  - Decisions should be taken by a suitably qualified ‘Examiner’ and not require panel appointments..
  - Where the complaint is based upon a valid registration, the requirement that the jurisdiction of registration incorporate substantive examination (paras 1.2f (i) and 8.1a) should be removed.
  - If, as is expected in the majority of cases, there is no response from the registrant, the default should be in favour of the

complainant and the website locked. The examination of possible defences in default cases according to para 8.4(2) would otherwise give an unjustified privilege to the non-cooperating defendant.

- The standard of proof (para 8.2) should be lowered from “clear and convincing evidence” to a preponderance of evidence”.
- The “bad faith” requirement in paras 1.2f), 1.2g) and 8.1c) is not acceptable. Complainants will in only rare cases prevail in URS proceedings if the standards to be fulfilled by registrants are lax. Correspondingly, the factors listed in paras 5.7a) (“bona fide”) and b) “been commonly known by the domain name”) can hardly allow a domain name owner to prevail over the holders of colliding trademarks.
- A ‘loser pays’ mechanism should be added. In addition, registrants who have lost five or more URS proceedings should be deemed to have waived the opportunity to respond to future URS complaints (this amendment corresponds to the “two strikes” provision which applies to rights holders).
- However, there should be a clear rationale for appeal by the complainant. The time for filing an appeal in default cases must be reduced from 2 years to not more than 6 months. In addition, the examination of possible defences in default cases according to para 8.4(2) means an unjustified privilege of the non-cooperating defendant.
- The URS filing fee should be US\$200-US\$300 and minor administrative deficiencies should not result in dismissal of the URS complaint.
- A successful complainant should have the right of first refusal for transfer of the disputed domain name after the suspension period so that the complainant is not forced to pursue a UDRP proceeding to secure a transfer.
- The URS should go beyond ‘exact’ matches and should at least include exact + goods/other generic words e.g. “Kodakonlineshop”.

### **Explanation and argument**

The generally acknowledged rapid escalation of the opportunity for cybersquatting caused by the proposed new gTLD round is an issue of major concern for governments in view of its likely impact on business, consumer and economic welfare, both nationally and globally. The URS mechanism was recommended specifically to tackle obvious examples of opportunistic cybersquatting by providing rights holders with a cost effective and swift remedy.

The GAC advises therefore that these proposed amendments to the URS are most important. Without these amendments, the GAC believes that URS will fail to meet its stated purpose and will be rendered ineffective and useless.

In particular, the GAC considers that the current proposals are too cumbersome and lengthy to support public policy objectives of harm reduction. Surveys and consultations undertaken by GAC representatives show that few in-house trade mark counsel believe that the proposed URS system in the final DAG provides a cost effective, expedited process in clear cut cases of trade mark abuse. Furthermore, the process too closely mirrors the UDRP mechanisms which are intended to deal with more complex disputes. The URS

as currently devised does not contain sufficient deterrence to serial cybersquatters. These changes would bring the URS back into line with its original objectives as agreed by the IRT and STI by ensuring that the URS provides an effective and rapid remedy, with more streamlined processes and faster turn round of decisions.

While it is noted that that the URS only covers intentional bad faith conduct, the GAC underlines that ICANN should make every effort to ensure that safeguards are in place to facilitate reinstatement as soon as possible in a genuine case of accidental rights infringement, through illness or some other legitimate absence, an individual or small/medium sized enterprise, has failed to respond within the timescale available.

### ***3. Rights Protection: Post-delegation Dispute Resolution Procedure (PDDRP)***

#### **GAC Advice:**

The GAC recommends that:

- The standard of proof be changed from “clear and convincing evidence” to a “preponderance of evidence”.
- The second level registrations that form the underlying basis of a successful PDDRP complaint should be deleted.
- The requirement of “substantive examination” in para 9.2.1(i) should be deleted.
- A new para 6.1 a) be added: “being identical to the complainant’s mark in relation to goods and services which are identical to those for which the complainant’s mark is registered. This would not apply if the registrant has a better right to the mark. In particular the registrant will in normal circumstances have a better right if the mark has been registered prior to the registration of the complainant’s mark.”
- Regarding the second level (para 6.2), the registrant operator should be liable if he/she acts in bad faith or is grossly negligent in relation to the circumstances listed in para 6.a)-d).
- The requirement in para 7.2.3 lit.d) that the complainant has to notify the registry operator at least 30 days prior to filing a complaint is burdensome and should be reduced to 10 days if not deleted entirely.

Para 19.5 should be amended as follows: “In cases where the Expert Determination decides that a registry operator is liable under the standards of the Trademark PDDRP, ICANN will impose appropriate remedies that are in line with the Determination.

**Explanation and Argument** These changes would ensure that the PDDRP is consistent with the requirements in a civil action for contributory trademark infringement action or unfair competition and that the abusive second level registrations are deleted after a successful PDDRP complaint.

The GAC believes that the liability criteria in the Applicant Guidebook are too lax. In particular, according to para 6, the liability of the registry operator is only triggered by behaviours such as “taking unfair advantage”, “unjustifiable impairment of the distinctive

character of the reputation of the complainant's mark" or "impermissible likelihood of confusion with the complainant's mark". The proposed changes to para 6 are therefore intended to strengthen the criteria.

The GAC considers that para 19.5 grants ICANN too much discretion in choosing the remedies it imposes on the registry operators and recommends that the remedies be consistent with the Expert Determination.

Ensuring full and effective compliance with the rules is a crucial issue post-delegation. The GAC believes therefore that ICANN needs to deploy a sufficiently large team for this purpose with an appropriate budget allocation.

#### ***4. Consumer Protection***

##### **Recommended GAC Advice:**

**Points of Contact for Abuse:** The GAC proposes the following amendment to the "Maintain an abuse point of contact" paragraph in the DAG to include government agencies which address consumer protection:

A registry operator must assist law enforcement, government agencies and agencies endorsed by governments with their enquiries about abuse complaints concerning all names registered in the TLD, including taking timely action, as required, to resolve abuse issues.

**Effective Contract Compliance:** The GAC advises the Board to ensure that ICANN's contract compliance function is adequately resourced to build confidence in ICANN's ability to enforce agreements between ICANN and registries and registrars.

##### **Explanation and argument:**

There are concerns that internationally, "law enforcement" is interpreted as solely referring to police agencies, which would exclude other enforcers that do not fall under this category. Specifically stating "government agencies and agencies endorsed by a government" should (in theory) quash any ambiguity. In addition, the challenges facing ICANN's current contract compliance efforts are expected to be magnified with the introduction of an unknown number of new gTLDs.

##### **Vetting of certain strings**

The GAC proposes that gTLD strings which relate to any generally regulated industry (e.g. .bank, .dentist, .law) should be subject to more intensive vetting than other non-geographical gTLDs.

##### **Explanation and argument**

The evaluation processes in the Applicant Guidebook offer safeguards to minimise abuse through for example objections on "community grounds." However, government authorities and agencies are concerned about the lack of proper safeguards provided by additional rigorous procedures for vetting applicants.

**Why does the GAC believe that there is a need to enhance consumer protection?**

National consumer protection authorities and fair trading agencies have expressed concern that the expansion of the number of gTLDs will establish certain consumer-orientated gTLDs that will be particularly prone to abuse and risk of increased opportunities for misrepresentation to consumers and generally expansion of the means for conducting online consumer fraud. Moreover, there is a perceived risk that certain gTLDs may become synonymous with criminal activity which may ultimately undermine consumer trust in online markets generally.

**7. Post-Delegation Disputes**

The GAC advises the ICANN Board to instruct ICANN staff to amend the Applicant Guidebook in the following way:

1. Change the wording in the sample letter of Government support in AG back to the wording in DAGv4 and keeping the new paragraph 7.13 of the new gTLD registry agreement with the changed wording from “may implement” to “will comply”. E.g change the wording from “may implement” back to “will comply” with a legally binding decision in the relevant jurisdiction.
2. In addition describe in the AG that ICANN will comply with a legally binding decision in the relevant jurisdiction where there has been a dispute between the relevant government or public authority and registry operator.

**Explanation:**

Even though ICANN’s commitment to comply with court orders or legally binding decisions by public authorities, the registry agreement between ICANN and the registry should have clear wording on this commitment to make sure that this obligation to the Government stands out as a clear and underlying premise for entering into the agreement

**8. Use of geographic names:**

*1. Definition of geographic names*

**Recommended GAC Advice:**

**The GAC asks ICANN to ensure that the criteria for community objections are implemented in a way that appropriately enables governments to use this instrument to protect their legal interest.**

ICANN refers to detailed explanations given in the “Final Draft Applicant Guidebook”.

The GAC is of the view that the criteria for community objections do still not meet these requirements. The problem could be solved, if a free of charge objection mechanism would allow governments to protect their interest and to define names that are to be considered geographic names. This implies that ICANN will exclude an applied for string from entering the new gTLD process when the government formally states that this string is considered to be a name for which this country is commonly known as

**The GAC considers that the provisions in DAG4 in relation to city names carry the danger that an applicant could seek to avoid the safeguard of government support or non-objection if the applicant simply states that the intended use of the name is for non-community purposes.**

The GAC asks ICANN to review the proposal in the DAG in order to ensure that this potential does not arise.

ICANN states that applicants are required to provide a description/purpose for the TLD, and to adhere to the terms and condition of submitting an application including confirming that all statements and representations contained in the application are true and accurate.

The GAC is of the view that this statement does not reflect fully its concerns and asks for further explanations. The problem could be solved, if a free objection mechanism would allow governments to protect their interest.

**The GAC reminds the Board that governments need time to consult internally before deciding on whether or not to deliver a letter of approval or non-objection.**

ICANN explains that it has not been decided how long the application period will be open from the launching of the gTLD program and recalls that there will be a four months communications campaign prior to the launch.

No further action required by now.

**The GAC reiterates its position that governments should not be required to pay a fee for raising objections to new gTLD applications.**

It is the view of the ICANN Board that governments that file objections should be required to cover costs of the objection process just like any other objector.

The problem could be solved, if a free objection mechanism would allow governments to protect their interest.

## ***2. Further requirements regarding geographic names***

The GAC clarifies that it is a question of national sovereignty to decide which level of government or which administration is responsible for the filing of letters of support or non-objection. There may be countries that require that such documentation has to be filed by the central government - also for regional geoTLDs; in other countries the responsibility for filing letters of support may rest

with sub-national level administrations even if the name of the capital is concerned. GAC requests some clarification on this in the next version of the Applicants Guidebook.

According to the current DAG applications will be suspended (pending resolution by the applicants), if there is more than one application for a string representing a certain geographic name, and the applications have requisite government approvals. The GAC understands such a position for applications that have support of different administrations or governmental entities. In such circumstances it is not considered appropriate for ICANN to determine the most relevant governmental entity; the same applies, if one string represents different geographic regions or cities. Some governments, however, may prefer not to select amongst applicants and support every application that fulfils certain requirements. Such a policy may facilitate decisions in some administrations and avoid time-consuming calls for tenders. GAC encourages ICANN to process those applications as other competing applications that apply for the same string.

## **9. Legal Recourse for Applications:**

In commenting DAG4 GAC emphasised that a denial of any legal recourse – as stipulated in the guidebook - is inappropriate. In its response the ICANN Board stated that it does not believe that ICANN should expose itself to costly lawsuits any more than is appropriate.

The GAC reiterates its concern that excluding the possibility of legal recourse might raise severe legal problems. GAC therefore urges the ICANN Board to seek legal advice in major jurisdiction whether such a provision might cause legal conflicts – in particular but not limited to US and European competition laws. If ICANN explains that it has already examined these legal questions carefully and considering the results of these examinations still adheres to that provision, GAC will no longer insist on its position. However, the GAC expects that ICANN will continue to adhere to the rule of law and follow broad principles of natural justice. For example, if ICANN deviates from its agreed processes in coming to a decision, the GAC expects that ICANN will provide an appropriate mechanism for any complaints to be heard.

## **10. Providing opportunities for all stakeholders including those from developing countries**

### *Main issues*

#### **1. Cost Considerations**

“GAC urged ICANN to set technical and other requirements, including cost considerations, at a reasonable and proportionate level in order not to exclude stakeholders from developing countries from participating in the new gTLD process.”

GAC: new gTLD applications from municipalities and local governments in developing countries

**2. Language diversity**

Key documents produced by ICANN must be available in all UN languages within a reasonable period in advance of the launch of the gTLD round. The GAC strongly recommends that the communications strategy for the new gTLD round be developed with this issue of inclusiveness as a key priority”.

**3. Technical and logistics support**

**4. Outreach – as per Joint AC/SO recommendations**

**5. Joint AC/SO Working Group on support for new gTLD applicants.**

On 10th December 2010 the GAC through its Cartagena GAC communiqué stated as follows: “The GAC welcomed an update on the work of the Joint AC/SO Working Group on support, and encourages the Working Group to continue their efforts, particularly with regard to further outreach with developing countries” further, the GAC urged ICANN to adopt recommendations of the Joint AC/SO Working Group.

**Recommendations of the Joint AC/SO Working Group:**

Who should receive Support?

- Non-governmental Organizations (NGOs), civil society and not-for-profit organizations
- Limited Community based applications such as cultural, linguistic and ethnic
- Applications in languages whose presence on the web is limited
- Local entrepreneurs, in those markets where market constraints make normal business operations more difficult
- Applicants located in emerging economies

Type of support:

- Cost Reduction Support
- Sponsorship and other funding support
- Modifications to the financial continued operation instrument obligation
- Technical support
- Logistical support
- Obligation Technical support for applicants in operating or qualifying to operate a gTLD
- gTLD Exception to the rules requiring separation of the Registry and Registrar function

**6. Applications from Governments or National authorities (especially municipal councils and provincial authorities) – special consideration for applications from developing countries**

GAC communiqué’s on the issue:

- i. Brussels Communiqué

The GAC commented that the new gTLD process should meet the global public interest consistent with the Affirmation of Commitments. It therefore urged ICANN to set technical and other requirements, including cost considerations, at a reasonable and proportionate level in order not to exclude developing country stakeholders from participating in the new gTLD-process. Key documents should be available in all UN languages. The GAC urges that the communications and outreach strategy for the new gTLD round be developed with this issue of inclusiveness as a key priority.

ii. Nairobi Communiqué

The GAC believed that instead of the then proposal of single-fee requirement, a cost-based structure of fees appropriate to each category of TLD would:

- a) prevent cross subsidization and
- b) better reflect the project scale,

This would improve logistical requirements and financial position of local community and developing country stakeholders who should not be disenfranchised from the new TLD round.

Further the board believes that :

- a. New gTLD process is developed on a cost recovery model.
- b. Experience gained from first round will inform decisions on fee levels, and the scope for discounts and subsidies in subsequent rounds.
- c. Non-financial means of support are being made available to deserving cases.
  - i. Proposed that the following be entertained to achieve cost reduction:
    - Waiving the cost of Program Development (\$26k).
    - Waiving the Risk/Contingency cost (\$60k).
    - Lowering the application cost (\$100k)
    - Waiving the Registry fixed fees (\$25k per calendar year), and charge the Registry- Level Transaction Fee only (\$0.25 per domain name registration or renewal).
  - ii. Proposed that the reduced cost be paid incrementally, which will give the applicants/communities from developing countries more time to raise money, and investors will be more encouraged to fund an application that passes the initial evaluation.
  - iii. Believe that communities from developing countries apply for new gTLDs according to an appropriate business model taking into consideration the realities of their regions. ICANN's commitment towards supporting gTLD applicants in communities from developing countries will be a milestone to the development of the overall Internet community in Africa and other developing regions.

**A. Other Developing world Community comments**

Rolling out new gTLD and IDNs was done in a hurry and without basis on a careful feasibility study on the impact that this rollout will have on developing countries. For some representatives, this is a massive roll out of gTLDs and IDNs that will find many developing countries unprepared and unable to absorb it. There is the fear that there might be serious consequence in terms of economic impact to developing countries.

**11. Law enforcement due diligence recommendations to amend the Registrar Accreditation Agreement as noted in the Brussels Communiqué**

The GAC advises the ICANN Board to instruct ICANN staff to amend the final Draft Applicant Guidebook as follows:

**Module 1:**

1. Include other criminal convictions as criteria for disqualification, such as Internet-related crimes (felony or misdemeanor) or drugs.
2. Assign higher weight to applicants offering the highest levels of security to minimize the potential for malicious activity, particularly for those strings that present a higher risk of serving as venues for criminal, fraudulent or illegal conduct (e.g. such as those related to children, health-care, financial services, etc.)

**Module 2:**

1. Add domestic screening services, local to the applicant, to the international screening services.
2. Add criminal background checks to the Initial Evaluation.
3. Amend the statement that the results of due diligence efforts will not be posted to a positive commitment to make such results publicly available
4. Maintain requirements that WHOIS data be accurate and publicly available.

**Explanation:**

These amendments will improve the prospects for mitigating malicious conduct and ensuring that criminal elements are hindered from using the DNS for criminal and illegal activities. The GAC also strongly encourages, and will contribute LEA expertise to this activity, further work on the high level security zone requirements.

**12. The need for an early warning to applicants whether a proposed string would be considered controversial or to raise sensitivities (including geographical names)**

In conjunction with the GAC's proposed amendments to the Objections Procedures, to Community-based strings, and Geographic

Names, the GAC advises ICANN to reconsider its objection to an “early warning” opportunity for governments to review potential new gTLD strings and to advise applicants whether their proposed strings would be considered controversial or to raise national sensitivities.

## **Appendix: Background Material**

### ***1. Intellectual Property Rights***

National governments have significant public policy concerns that the expansion of gTLDs will increase the level of fraud and abuse on the Internet, which will harm consumers, businesses, and other users of the Internet. The GAC advises the ICANN Board that the current proposed mechanisms to protect consumers and trademark rights from harm and abuse are inadequate and unacceptable. It is crucial that adequate mechanisms be adopted now -- and not after the first round of new gTLDs is introduced -- to ensure that the risk of such increased fraud and abuse is mitigated.

The GAC restates its previously articulated concerns that ICANN have in place an effective compliance program with sufficient staff and resources before ICANN launches the new gTLD program.

#### **Why is this an issue of public policy concern for the GAC?**

Trademark law protects consumers from deception and confusion and protects trademark owners' property rights from infringement. This dual basis, which is reflected in the laws of every GAC member country, mirrors the GAC's public policy concern in the rights protection issue.

The GAC acknowledges the potential commercial opportunities associated with the introduction of new gTLDs subject to a set of rules with adequate mechanisms for rights protection.

However, the GAC has nonetheless always regarded the risks to brand-owners associated with a major expansion of the gTLD space as a major public policy concern that must be carefully addressed to ensure that the opportunities and benefits outweigh the costs. In particular, many trademark owners will be forced to purchase second level defensive registrations in order to avoid misuse of their trademarks. Purchasing second level registrations will be costly and unlikely to prevent all possible misuse. The GAC notes that the significant cost burden for business arising from defensive registrations to protect brands and trade marks was described in the economic analysis undertaken by Katz, Rosston and Sullivan

The rights protection mechanisms to be established in the Applicant Guidebook are therefore crucial and must offer practical and

comprehensive approaches consistent with existing national legal frameworks and established best practice.

Once implemented in the first round of gTLD applications, ICANN should commission an independent review of the operation of the rights protections mechanisms in order to establish their effectiveness and practicability, to identify any deficiencies and scope for further improvement, and to make recommendations for public comment on how they might be changed prior to the second round of applications.

Relevant history:

### **The GAC's recent interaction with the Board on Protection of Rights Owners and consumer protection during 2010**

The GAC noted in its Nairobi communiqué the recommendations of the Special Trade Marks Issues Review Team. The GAC Chair stated in his letter dated 10 March 2010 to the ICANN Chair regarding DAGv3 that it

*is important to ensure that intellectual property rights are properly respected in the new gTLD space consistent with national and international law and standards. The GAC expects that the proposed Trademark Clearing House should be made available to all trademark owners, irrespective of the legal regime they operate under, and that an effective and sustainable Uniform Rapid Suspension (URS), with appropriate remedies, and a Post Delegation Dispute Resolution Policy are established to ensure appropriate trade mark protection. While these initiatives are broadly welcomed therefore in serving to help address the concerns of brand owners, the GAC believes that they require further refining. In particular, “substantive examination” should be re-defined so that registrations examined on “absolute grounds” are included in order to ensure broader availability of the URS.*

The Chair of ICANN responded on 5 August 2010 as follows:

*The GAC comments, in concert with other comments, were taken in account in version 4 of the Applicant Guidebook that, for the first time, included the set of proposed intellectual property rights protection mechanisms. In particular, ICANN has broadened the types of trademark registrations that must be honored in offering a “Sunrise” service and all new registries employing an IP Claims service must honor trademarks registered in all jurisdictions. The types of registrations offered protections have also been broadened for the Uniform Rapid Suspension Service, one of the new post-delegation rights protection mechanisms. The Post Delegation Dispute Resolution Policy has also been amended in response to specific recommendations from the ICANN community.*

**After due consideration of this response and the amendments contained in DAGv4, the GAC took the view, however, that the ICANN response to the GAC's advice and proposals were insufficient. This was communicated in the GAC Chair's letter of 23 September 2010 to the ICANN Chair, with particular reference to the Trademark Clearing House (TC) and the Uniform Rapid Suspension System (URS), as follows:**

*The GAC notes with great concern that brand-owners continue to be faced with substantial and often prohibitive defensive registration costs which constitute a negative impact on their business planning and budgeting over which they have no control. Consultations by individual GAC members with business stakeholders underline how this issue remains a fundamental downside to the expansion of the gTLD space, far outweighing any perception of opportunities for innovation and customer-orientated benefits from the creation of corporate brand TLDs.*

*In the current financial and economic climate, these consultations reveal that many individual brands and businesses and media entities – some with large families of brands - find themselves without a sound business case to justify high levels of expenditure on large numbers of domain name registrations, most of which they are unlikely ever to use. Many of those that do decide to commit valuable financial resources for acquiring such defensive registrations will need to take some difficult decisions as to how to prioritise their efforts to avoid as much abuse of their trademarks as possible, in the knowledge that they will not be able to prevent all the potential abuse of their brands that the new gTLD round will facilitate.*

*This problem is exacerbated by lack of awareness: a recent survey carried out by 'World Trademark Review' showed that over 50% of respondents did not understand the implications for them of the gTLD programme.*

*The GAC remains of the view, therefore, that more concerted attention needs to be paid by ICANN to mitigate the costs to brandowners of new gTLDs arising from the need to acquire defensive registrations. The GAC urges ICANN therefore to reach out more effectively to the business community to set out both the opportunities for corporate business and the cost implications for brandholders of the expansion of the gTLD space.*

*The GAC notes the efforts to enhance through process the protection of rights owners as recounted in your letter of 5 August and developed in version 4 of the DAG.*

*In particular the GAC welcomes the expansion of the Trademark Clearing House to allow all nationally registered trademarks including those not substantially reviewed. However, the GAC shares the views of the World Intellectual Property Organisation (WIPO) that ICANN should ensure that the Trademark Clearing House operates on non-discriminatory terms and not impose a validation fee depending on the source of the trademark. The GAC also recommends that the match criteria*

*for searches be extended to include results that combine a trademark and a generic term (e.g. “Kopdakcameras”).*

*The GAC also urges ICANN to ensure that all new rights protection mechanisms complement the existing UDRP mechanism. The GAC has serious concerns with regard to the way in which the draft Uniform Rapid Suspension System which governments had supported has evolved so as to require a much higher burden of proof while limiting marks eligible for a URS claim to only those which have been subject to substantive review or validated in the Clearing House with the associated cost and time implications. As a result, the GAC believes that the aim of achieving a light-weight mechanism has been compromised with the successive drafting of the URS, to the extent that it no longer serves as a viable alternative for rightsholders to the UDRP in securing the timely suspension of domain names.*

**The ICANN Chair responded in his letter of 23 November to the GAC Chair as follows:**

*The Board understands the concerns expressed by the GAC regarding the potential costs of defensive registrations, and notes that the community spent a significant amount of time considering this issue, notably through the Implementation Recommendation Team and the Special Trademark Issues Working Group. The Board considered the many recommendations and supports the resulting protections now outlined in the Applicant Guidebook. These include:*

- *The requirement for all new registries to offer a Trademark Claims service or a sunrise period at launch.*
- *The establishment of a Trademark Clearinghouse as a central repository for rights information, creating efficiencies for TM holders, registries, and registrars.*
- *The existing Uniform Domain Name Dispute Resolution Policy (UDRP) continues to be available where complainant seeks transfer of names. Compliance with UDRP decisions is required in all new, as well as existing, gTLDs.*
- *Implementation of a Uniform Rapid Suspension (URS) system that provides a streamlined, lower-cost mechanism to suspend infringing names.*
- *The requirement for all new gTLD operators to provide access to “thick” Whois data. This access to registration data aids those seeking responsible parties as part of rights enforcement activities.*

**Following further individual GAC member national consultations with domestic rights protection agencies and stakeholders, and due consideration of**

- a) the ICANN Chair’s letter of 23 November 2010;**
- b) the non-adoption in the “final” version of the DAG of the GAC’s proposals for the TC and the URS contained in the GAC Chair’s letter of 23 September 2010;**

- c) the briefing the GAC received in Cartagena from ICANN staff on the changes incorporated in the “final” version of the DAG;
- and d) the GAC’s discussions in Cartagena with the GNSO;

at its meeting with the ICANN Board in Cartagena the GAC expressed that it continued to have fundamental concerns about the inadequacy of the proposed rights protection mechanisms.

Furthermore, the Cartagena communiqué stated that

*as a result of the GAC's exchange with the GNSO, the GAC is also mindful that major stakeholder groups within ICANN (such as the Business and Intellectual Property constituencies) do not believe the most recent version of the DAG reflects their advice and concerns.*

## **2. Root Zone Scaling**

### **1. Introduction**

This scorecard summarizes the GAC’s remaining concerns that ICANN provide sufficient safeguards so that the expected scale and rate of change of introduction of new gTLDs will not have a negative impact on the security, stability and resilience of the DNS.

References are made to ICANN Chair’s letter to the GAC Chair of 23 November 2010 in response of the letter of 10th March 2010 from the GAC Chair (‘ICANN’s response’) and to and to the Draft Applicants Guidebook version 4 (‘DAG4’)

### **2. Root growth control and monitoring / early warning system**

In ICANN’s response reference is made to the intention (DAG4) to delegate 200 to 300 TLDs annually, and that in no case more than 1000 new gTLDs be added to the root zone in a year.

The GAC understands that the robustness of the root server system and the way it will react following substantive additions can only be fully understood by the practice and experience of the first round. Therefore the establishment of a monitoring system, as recommended by the community and taken on board by ICANN, is fully supported by the GAC. According to ICANN’s response “(it will) ensure that changes relating to scaling of the root management systems don’t go unnoticed prior to those changes becoming an

issue” This addresses the GAC’s advice that there should be a control mechanism to allow for the mitigation of any strain or unwanted effects of a large scale introduction of new TLDs.

However, the GAC believes that the implications and processes needed to act upon the outcome of such an early warning system need to be elaborated further in the Applicant Guidebook. The GAC accordingly now tables the following questions and proposals for the Board’s consideration:

1. What will be the modus operandi when the system issues a warning that the introduction should slow down or even stopped?
2. There should be scenarios and system responses clearly set out so that ICANN reacts predictably and quickly when there are indicators that new additions and changes are straining the root zone system. The level of detriment should be graded and described, with the resulting restorative measures outlined. These would include stopping further additions for defined periods, more intensive monitoring and in extreme cases suspension of new gTLDs.
3. Such scenarios should be described in the Applicants Guidebook with detailed explanations of how applicants will be informed about potential slowing down or even stopping of their application If the situations are defined and documented then applicants should also be advised of the consequences in certain cases.

The GAC recommends that the control mechanism should be carefully designed and there should be clearly understood (policy) implications reflected in the Applicant Guidebook before ICANN launches the round to open up the gTLD space. In view of the widely acknowledged unpredictability of all the effects of a massive introduction of gTLDs in the root zone system, the GAC also believes that there should be an in depth evaluation of the impacts of the first introduction round on the root zone system followed by a public comment period before a decision is taken to start the second round. The monitoring system for this purpose should therefore be fully operational from the start of the first round in order to deliver the necessary relevant data before the second round starts.

Therefore the GAC requests the Board,

4. to continue implementing a monitoring system and ensure that the processes that flow from its results are fully described in the Application Guidebook before the start of the first application round;
5. not to launch a second round of applications (1) unless there are indications from monitoring the root system that the first round did not in any way jeopardize the security and stability of the root zone system.

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<sup>1</sup> assuming the first one does not exceed 200- 300 application

### **3. Operational and resource issues to avoid root change congestion and maintain continued integration of the system**

The GAC expressed on several occasions its concern that the root change processes could face congestion at the operational level. ICANN's response made clear that the scaling effects can be absorbed by the root zone operators but that these effects are much more likely to be felt within the context of ICANN's internal systems, such as application processing, legal review, IANA process, etc. Therefore the GAC remains concerned as to whether both ICANN's internal systems and the resources of external actors can scale up sufficiently to meet the demands in order to process 200 to 300 applications a year.

The GAC accordingly now tables the following questions for the Board's consideration:

1. How will the necessary increase in resources be accomplished, is there flexibility to deal with changing demands, and how will ICANN avoid the possibility that other activities will be impacted by the possible diversion of resources to processing new gTLD applications?
2. How will ICANN address the specific needs of applicants from different, perhaps non-English speaking cultures, and with different legal environments?
3. How quickly would ICANN expect to complete contract negotiations for new gTLDs in a potential situation of 200 to 300 simultaneous applications and evaluations?
4. Are all the external actors (IANA, USG, root server operators, etc) sufficiently informed about what is expected from them in terms of work loadings and resources in order to fulfill their respective roles, in particular the pre-delegation checking, approvals, and implementation of potentially 200 to 300 root zone changes a year?
5. Following delegation of so many additional TLDs, what is ICANN's projection for the administrative workload for ICANN and IANA for processing requests for changes and additions to TLDs once they have been established in the root? What is ICANN's plan for resourcing these day-to-day operational functions, including staff requirements?

### **3. Geographic Names: Analysis of GAC's DAG4 comments and ICANN's answers**

- a) The GAC underlines that country and territory names should be excluded from applications until the ccPDP.

The Board will not consider such applications in the first round.

- The GAC reiterates its understanding that the IDN ccPDP and the use of country and territory names are related. Therefore the question, whether country and territory names need to be excluded has to be reconsidered before the next application round.

The GAC notes that ICANN considers that the use of country and territory names in general is out of scope of the IDN ccPDP, and therefore linking the two processes does not appear appropriate. ICANN therefore suggests that it is a possibility that the use of country and territory names may be considered after the first round of gTLD applications. Modalities for subsequent rounds will be determined by ICANN based on recommendations from the ICANN community and GAC Advice. It is important that GAC restates advice on this issue; see Annex B to Nairobi Communiqué. The GACs main point was that strings that are a meaningful representation or abbreviation of a country or territory name should be treated outside the gTLD process. If they should be considered as new TLDs, they should be handled through a policy development process in ccNSO.

**b) GAC reiterated its concern about insufficient protection of geographic names.**

The Board does not refer to this concern.

For the GAC appropriate and free objection procedures would be acceptable to provide the protection of geographic names (see also c and e).

**4. GAC's position on "Definition of geographic names"**

The public comment period allows free of charge comments on every applied for string. Individual governments as the entire GAC can inform ICANN, which strings they consider to be geographic names. ICANN commits to process applications for strings that governments consider to be geographic names only if the respective government does support or not object to the use of that string.

GAC recalls that in cases in which geographic names correspond with generic names or brands, such a regulation would not exclude per se the use of generic names and brands as Top-Level Domains. It would, however, be in the area of responsibility of the adequate government to define requirements and safeguards to prevent the use of those Top-Level Domains as geoTLDs.

**5. Providing opportunity for all stakeholders including those from developing countries**

**SUMMARY TABLE**

**A. GAC & ICANN Board Positions**

No.	Issue Topic	GAC Position	ICANN Board Position	Remarks
1.	Recommendations of the Joint AC/SO Working Group	Supported	Supported	Board encouraged to adopt the recommendations
2.	Support on Technical operations and other requirements	ICANN to set technical and other requirements, including cost considerations, at a reasonable and proportionate level in order not to exclude developing country stakeholders from participating in the new gTLD-process	<ul style="list-style-type: none"> <li>• New gTLD process is developed on a cost recovery model</li> <li>• Experience gained from first round will inform decisions on fee levels, and the scope for discounts and subsidies in subsequent rounds</li> <li>• Non-financial means of support are being made available to deserving cases.</li> </ul>	
3.	Concerns from the Internet Government Forum (IGF), Vilnius, Lithuania	Letter from GAC to ICANN 23 <sup>rd</sup> September 2010. The GAC reiterates its strong belief that the new gTLD process should meet the global public interest in promoting a fully inclusive and diverse Internet community and infrastructure, consistent with the Affirmation of Commitments. The GAC therefore urges ICANN to set		

No.	Issue Topic	GAC Position	ICANN Board Position	Remarks
		<p>technical and other requirements, including cost considerations, at a reasonable and proportionate level in order not to exclude stakeholders from developing countries from participating in the new gTLD process. Key documents produced by ICANN must be available in all UN languages within a reasonable period in advance of the launch of the gTLD round. The GAC strongly recommends that the communications strategy for the new gTLD round be developed with this issue of inclusiveness as a key priority.</p>		

**B. Developing Countries/Communities Position.**

No.	Issue Topic	Community Position	Joint SO/AC working Group Recommendation.	ICANN Board Position	Remarks
1.	Roll out of new gTLD's and IDN's.	Rolling out new gTLD's and IDNs was done in a hurry without basis on a careful feasibility study on the impact that this rollout will have on developing countries		The position of ICANN is that in no way this is a massive roll out and in fact there have been only 900 applications for new gTLD for a year and only 200 of them will be reviewed. ICANN holds the position that it has been fair and inclusive in its decision and that also it will help any country in this process	
2.	Eligibility for support	<p>Developing communities strongly believe that entrepreneur applicants from developing countries, where the market is not wide enough for a reasonable profit making industry, are eligible for support. The African Community believe:</p> <ul style="list-style-type: none"> <li>• Entrepreneur applicants from African countries are</li> </ul>	<p>Who should receive Support?</p> <ul style="list-style-type: none"> <li>• Governments, Municipal and local authorities from developing countries</li> <li>• Non-governmental Organizations (NGOs), civil society and not-for-profit organizations</li> <li>• Limited Community</li> </ul>	ICANN board is considering the proposals from the SO/AC joint working group.	

No.	Issue Topic	Community Position	Joint SO/AC working Group Recommendation.	ICANN Board Position	Remarks
		<p>eligible for support.</p> <ul style="list-style-type: none"> <li>• Deem that Civil society, NGOs and non for profit organizations in Africa are the most in need of such support,</li> <li>• Believe that support is of utmost importance for geographic, cultural linguistic, and more generally community based applications.</li> <li>• Support to new gTLD applicants in Africa be prioritized</li> <li>• Support to be provided to applicants of new gTLDs in Africa should include, financial, linguistic, legal and technical</li> <li>• Proposed cost reduction:</li> <li>• Proposed that the reduced cost be paid incrementally,</li> <li>• Applications to be according to the</li> </ul>	<p>based applications such as cultural, linguistic and ethnic</p> <ul style="list-style-type: none"> <li>• Applications in languages whose presence on the web is limited</li> <li>• Local entrepreneurs, in those markets where market constraints make normal business operations more difficult</li> <li>• Applicants located in emerging economies</li> </ul> <p>Type of support</p> <ul style="list-style-type: none"> <li>• Cost Reduction Support</li> <li>• Sponsorship and other funding support</li> <li>• Modifications to the financial continued operation instrument obligation</li> <li>• Technical support</li> <li>• Logistical support</li> <li>• Obligation Technical</li> </ul>		

No.	Issue Topic	Community Position	Joint SO/AC working Group Recommendation.	ICANN Board Position	Remarks
		<p>appropriate business models.</p> <ul style="list-style-type: none"> <li>• Supplementary support and additional cost reduction for gTLDs applications from African countries.</li> </ul>	<p>support for applicants in operating or qualifying to operate a gTLD</p> <ul style="list-style-type: none"> <li>• gTLDs Exception to the rules requiring separation of the Registry and Registrar function</li> </ul>		

R-7

RESPONDENT'S EXHIBIT



## New gTLD Program Explanatory Memorandum

### GAC and Government Objections; Handling of Sensitive Strings; Early Warning

Date of Original Publication:

15 April 2011

#### **Background—New gTLD Program**

This is one of a series of new Explanatory Memos related to recent consultations between ICANN's Board and Governmental Advisory Committee concerning ICANN's New gTLD Program.

These memos were developed to document the latest position on these topics by taking into account the current thinking, discussions and public comments received. Each memo not only reflects GAC advice but also contains the reasoning and rationale on each of the relevant issues regarding the Applicant Guidebook and the launch of the New gTLD Program.

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

Please note that this is a discussion draft only. Potential applicants should not rely on any of the proposed details of the new gTLD program as the program remains subject to further consultation and revision.

## Introduction

### **Current Environment**

The current version of the Applicant Guidebook, in accordance with the GNSO New gTLD Policy Recommendations, provides for objection and independent dispute resolution processes in order to provide protections for certain important interests such as intellectual property rights and community names.

The GAC, in its Indicative Scorecard on New gTLD Outstanding Issues, provided several recommendations regarding the handling of sensitive strings and the objection processes, among them (excerpted):

Delete the procedures related to “Limited Public Interest Objections”

Amend the evaluation process to include review by governments, via the GAC.

Expand categories and consideration of community-based strings and geographical place names (including names relating to particular sectors, such as those subject to national regulation).

Implement a free objection mechanism that would allow governments to protect their interests.

Provide for an early warning to applicants when a proposed string would be considered controversial or to raise sensitivities.

### **Recommendation**

Based on consideration of the GAC’s advice and consultations between the GAC and Board, it is recommended that:

The current application evaluation process flow be augmented to include a GAC Early Warning procedure and a GAC Advice on New gTLDs (i.e., objection) procedure. GAC Early Warning and GAC Advice on New gTLDs can be applied to any application, e.g., sensitive, community, sector, or geographic strings of any type.

### **Key aspects of the GAC Early Warning process are:**

The GAC Early Warning Notice should be submitted in the 60 days following the posting of the applications.

The Early Warning Notice is a notice to the applicant from the GAC that the application or proposed string would be considered controversial or raise national sensitivities.

The Early Warning Notice does not require GAC consensus; it requires a GAC decision to issue a notice based upon statements of member states or governments.

The GAC will forward the Early Warning Notice to the Board, and ICANN will notify the applicants. Applicants who withdraw within, say, 21 days of receiving the Notice will receive an 80% refund in order to incent resolution of the issue or withdrawal of applications where appropriate.

**Key aspects of the GAC Advice on New gTLDs procedure are:**

The GAC can provide advice to the Board on any application. To be considered by the Board during the application evaluation and delegation processes, the Advice must be submitted within a five-month timeframe after the applications are posted.

GAC advice that is stated to be a “GAC consensus” position and that states, this application should not proceed, will create a strong presumption for the Board that the application should not be approved. If the Board decides to approve the application, the Governmental Advisory Committee and the ICANN Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution.

GAC advice that does not indicate consensus or does not state that the TLD should not be delegated will be passed on to the applicant but will not trigger a Bylaws-required good-faith attempt at reconciliation if the Board decides to delegate the string. (Notwithstanding, of course, that the Board will take seriously any other advice that GAC might provide.)

GAC advice that is stated to be a “GAC consensus” position and that states, “the TLD in this application should not be delegated unless remediated” will raise a strong presumption for the Board that the application should be turned away. If there is a remediation method available in the Guidebook (such as securing government approval) that action may be taken. But material amendments to applications are generally prohibited and if there is no remediation method available, the application will be rejected and the applicant can re-apply in the second round.

Since ICANN and its constituent bodies are committed to operate to the maximum extent feasible in an open and transparent manner (consistent with

procedures designed to ensure fairness), ICANN will expect that GAC advice addressing new gTLD applications would identify objecting countries, the public policy basis for the objection, and the process by which consensus was reached.

The Board will consider the GAC advice as soon as practicable.

The creation of the new procedures obviates the need to eliminate the existing objection procedures, as they will continue to be available to other entities and individuals.

While category definitions will not be expanded, proposed GAC Early Warning and GAC Advice on New gTLDs procedures are designed so the GAC can provide input on any application for any reason, eliminating the need for specific definitions. Therefore, the procedures will address sensitive, community, geographic and sector (regulated industry) string issues where these are of concern to governments and also give indications to applicants on ways to avoid formal objections.

A limited “free” objection mechanism for governments wishing to participate in the dispute resolution process is proposed under separate cover that provides a finite amount of fees and also limits ICANN’s significant financial risk.

### ***Rationale for recommendation***

1. Delete the procedures related to “Limited Public Interest Objections”

The GAC indicated in Brussels that its concern relates to requiring governments to use this objection process. The Board and GAC therefore agreed that it would be consistent with GAC advice to leave the provision for Limited Public Interest Objections in the Guidebook, but the GAC (as a whole) would not be obligated to use the objection process in order to give advice.

2. Amend the evaluation process to include review by governments, via the GAC and provide for an early warning to applicants when a proposed string would be considered controversial or to raise sensitivities

Refer to the attached graphic, describing the new process flows. The existing procedures are in black and the proposed procedures, “GAC Early Warning” and GAC Advice on New gTLDs” are in blue.

The GAC Early Warning procedure is merely a notice but it is meant to advise applicants that government objection or GAC Advice on New gTLDs to not delegate the TLD is likely. The refund is set at a higher rate than the otherwise

maximum refund in order to encourage withdrawal in the face of the potential government-level objection. While the higher refund might seem to suggest that GAC statements are of greater import than other objections, this is justified. This is because GAC Early Warning need not be based on existing objection criteria in the Guidebook, so the Early Warning may be unanticipated by the applicant. This “surprise” is partially addressed by increasing the refund.

The GAC Advice on New gTLDs procedure is intended to address the concerns of governments and also to retain some certainty for applicants. It attempts to have the GAC clearly label its advice as consensus, if it is, and to specify that the TLD should not be delegated so it is clear when the Board might be disagreeing with GAC advice.

The Board will consider the GAC advice as soon as practicable, rather than waiting for the rest of the evaluation and any dispute resolution process to conclude.

3. Expand categories and consideration of community-based strings and geographical place names (including particular sectors, such as those subject to national regulation).

Expansion of categories in a clear way is extremely difficult. This is reflected in the public comment received. Community definitions have been drawn narrowly in the Guidebook to prevent abuses. Even expansion of categories will probably not address GAC concerns in some way as even the expanded definition might leave some genuine area of sensitivity unaddressed.

The proposed GAC Early Warning and GAC Advice on New gTLDs procedures are designed so the GAC can provide input any application for any reason, eliminating the need for specific definitions. Therefore, the procedures will address sensitive, community, geographic and sector (regulated industry) string issues. The GAC will not be barred from protecting its members interests by existing or even expanded limitations.

4. Implement a free objection mechanism that would allow governments to protect their interests.

It is understood that governments are reticent to pay for objections. However, governments are often the best suited to drive objections, and they do pay for similar services regularly, including resolution of disputes. The GAC also mentioned that governments must budget for dispute resolution fees if they anticipate the need to object to applications. There still is time for that and now is the time.

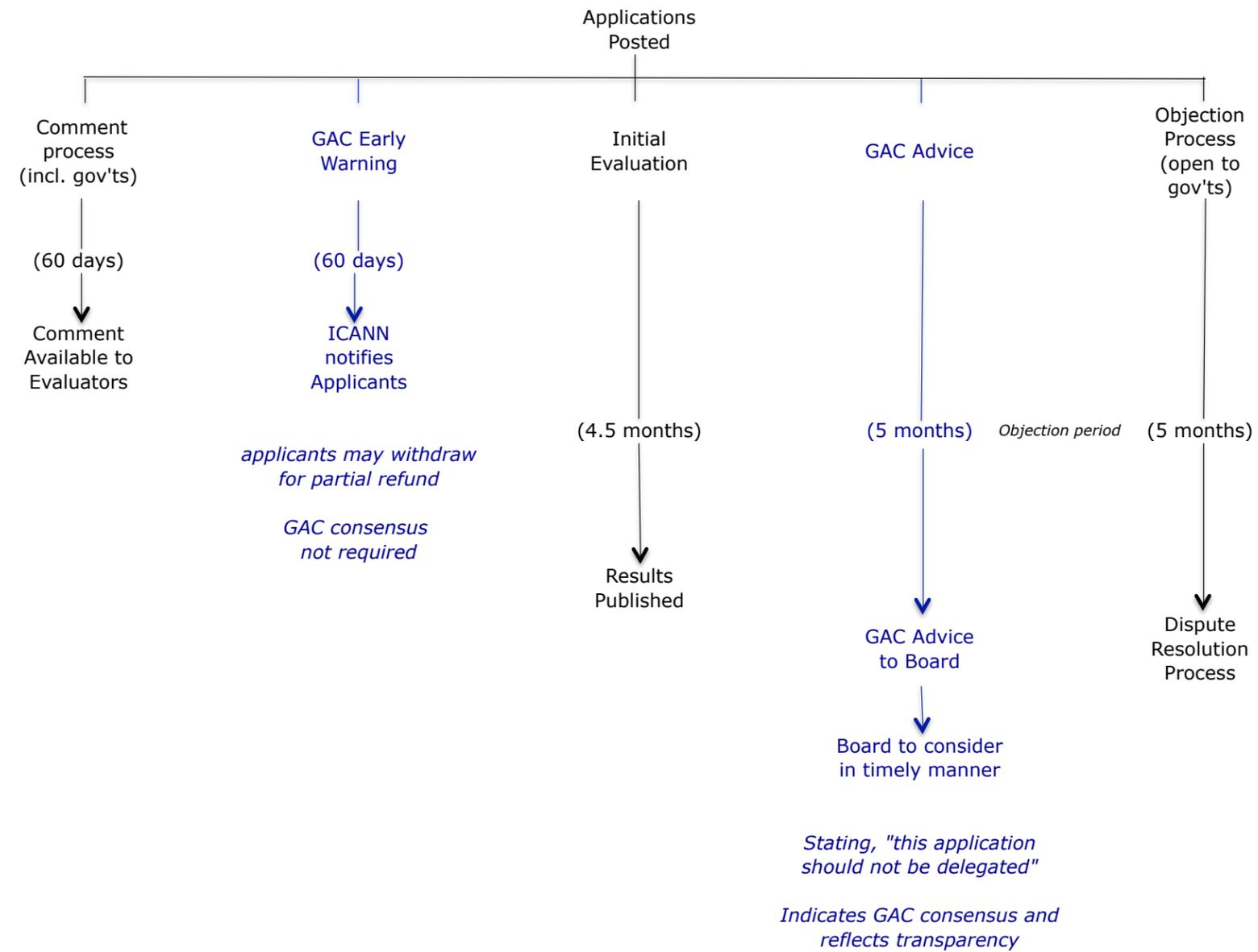
Payment of dispute resolution fees, multiplied by several times would pose a significant risk for ICANN. There is no provision in the current evaluation fee for recovering these costs. The costs must either be limited in some way, or allocated to other applicants. The latter seems inappropriate and, in any case, would be extremely difficult to calculate a priori.

Providing unlimited dispute resolution to governments would be the subject of abuses, as governments might become proxies for objectors seeking to block applications.

In order to protect government interests, ICANN will set aside a limited amount from reserves, say \$1MM to \$2MM. A model for limiting the number of ICANN-funded objections is published under separate cover. The money that is expended in providing limited fee exemptions will be recouped out of the \$25K in each evaluation fee that is earmarked for development costs. When development costs are recovered and dispute resolution fees reach a steady state, that portion of the fee will be eliminated.

Public comment has suggested that if the government does not pay a dispute resolution fee, neither should the applicant. This feature is not included in the model. If the applicant wins, the loser pays model means the applicant does not pay. If the applicant loses it means that the objection has merit, the applicant for TLD would violate the interests protected in the process, and it is reasonable for the applicant to bear those costs.

**NEW gTLDs: GAC OBJECTION AND ADVICE PROCESSES**  
 (Draft: Best Current Thinking)



- Notes:
1. GAC Early Warning and GAC advice can be applied to any application: e.g., sensitive, community, sector, or geographic strings of any type
  2. Refunds increased to 80% for applicants who withdraw within, say, 21 days of GAC Early Warning
  3. Limited fee relief for governments participating in objection process
  4. Time spans are minimums and may be extended

**R-8**

**RESPONDENT'S EXHIBIT**

## Revised ICANN Notes on: the GAC New gTLDs Scorecard, and GAC Comments to Board Response

This document contains the ICANN reply notes to the:

- "[GAC indicative scorecard on new gTLD outstanding issues](#)" of 23 February 2011, and
- "[GAC comments on the ICANN Board's response to the GAC Scorecard](#)" of 12 April 2011.

The original "[Notes](#)" document has been revised to reflect the ICANN reasoning based on discussions in San Francisco and the GAC Response dated 12 April 2011. In order to keep the document from becoming unwieldy and to make it relatively easy to follow, the original Board Notes column has been "redlined." However the rest of the document remains the same and does not contain the most recent "GAC comments", which are posted at the link indicated above. (Note: the simple formatting has some drawbacks. For example, the issue numbers no longer completely match those in the new "GAC comments" where the GAC have realigned the comments in a way that makes more sense.)

As before, each GAC scorecard item is noted with a "1A", "1B", or "2". Some scores have been adjusted to reflect changes made by the GAC and Board.

- "1A" indicates that the Board's position is consistent with GAC advice as described in the Scorecard.
- "1B" indicates that the Board's position is consistent with GAC advice as described in the Scorecard in principle, but that the implementation of the advice might be different than the GAC's recommendation.
- "2" indicates that the Board's current position is not consistent with GAC advice as described in the Scorecard and GAC Response.

### Results:

The recent ICANN Board – GAC consultations were successful in a number of ways. They were substantive, effective, results-oriented working sessions that created the gravamen for an effective ICANN - government working model going forward.

These consultations have resulted in several victories for ICANN and the GAC: the GAC agreed that ICANN should prepare for an economic study to be undertaken after the first round to measure program effectiveness and indicate improvements;

## Revised ICANN Notes on: the GAC New gTLDs Scorecard, and GAC Comments to Board Response

ICANN agreed to implement a “GAC Advice for New gTLDs” process. In these and other areas, both sides have made accommodations and also reached areas of agreement.

It should be noted that in any negotiation of 80 separate points, such as we have here, the final score is not going to be 80 to zero. At the end of the day, it seems the Board is going to have to say in some cases, “we are going against GAC advice,” but the Board has made serious and effective changes in response to the first GAC scorecard – as has the GAC. It is important to recognize that although there are “2’s” remaining, some of the solutions generated were intended to address the set of GAC concerns, even if they do not specifically address each point.

For example, the GAC Early Warning and the GAC Advice processes are intended to address specific GAC concerns about their role vis-à-vis the Board, but these processes were designed to address other GAC issues as well, e.g., broadening definitions of community and geographic TLDs. So while the Scorecard indicates that there are still areas of disagreement (i.e., “2s”) some of those areas are addressed in the broad nature of some of the solutions.

Item #	GAC Scorecard Actionable Item	Position	Notes
<b>1.</b>	<b>The objection procedures including the requirements for governments to pay fees</b>		
1.	Delete the procedures related to “Limited Public Interest Objections” in Module 3.	<b>1A</b>	The GAC indicated in Brussels and its 12 April “GAC comments” that it would be consistent with GAC advice to leave the provision for Limited Public Interest Objections in the Guidebook for entities other than GAC members and other governments, instead of the original GAC recommendation that the entire section be deleted. New, proposed GAC review procedures have been created (please see below). ICANN will also adopt the GAC recommendation that ICANN amend the title of Module 3 to “Objection Procedures” to more accurately reflect the intention to provide the GAC with a separate procedure for objections based on public policy concerns.
<b>2.</b>	<b>Procedures for the review of sensitive strings</b>		

**Revised ICANN Notes on: the GAC New gTLDs Scorecard, and GAC Comments to Board Response**

Item #	GAC Scorecard Actionable Item	Position	Notes
2.1.1.1	<p><b>1. String Evaluation and Objections Procedure</b></p> <p>Amend the following procedures related to the Initial Evaluation called for in Module 2 to include review by governments, via the GAC.</p> <p>At the beginning of the Initial Evaluation Period, ICANN will provide the GAC with a detailed summary of all new gTLD applications.</p> <p>Any GAC member may raise an objection to a proposed string for any reason. The GAC will consider any objection raised by a GAC member or members, and agree on advice to forward to the ICANN Board.</p>	<b>1B</b>	<p>The Board certainly respects that there are no mandated timeframes for GAC policy advice, nor a requirement to provide consensus advice to the Board. It is nonetheless useful for the efficiency of the process that GAC advice be timely, useful and documented. The Board appreciates that the GAC will endeavor to respond within the comment period and agrees that ICANN should attempt to set the time for the early warning period to be at 60 days.</p> <p>Coincident with the posting of this summary is also a proposal where the current application evaluation process flow would be augmented to include a GAC Early Warning procedure and a GAC Advice on New gTLDs (i.e., objection) procedure. GAC Early Warning and GAC Advice on New gTLDs can be applied to any application, e.g., sensitive, community, sector, or geographic strings of any type.</p> <p>The Early Warning Notice does not require GAC consensus; it requires a GAC decision to issue a notice based upon statements of member states or governments.</p> <p>The GAC Advice on New gTLDs procedure does not require GAC consensus but GAC advice that is stated to be a “GAC consensus” position and that states “this application should not proceed,” will create a strong presumption for the Board that the application should not be approved. If the Board then decides to approve the application, a Bylaws-required good faith attempt at reconciliation would be triggered.</p> <p>Additional detail and rationale for the positions is included in the companion paper posted with this summary.</p>
2.1.2	GAC advice could also suggest measures to	<b>2</b>	The Board appreciates that the Bylaws do not limit the GAC’s ability to

### Revised ICANN Notes on: the GAC New gTLDs Scorecard, and GAC Comments to Board Response

Item #	GAC Scorecard Actionable Item	Position	Notes
	mitigate GAC concerns. For example, the GAC could advise that additional scrutiny and conditions should apply to strings that could impact on public trust (e.g. '.bank').		<p>provide advice on public policy matters. We hope that GAC Early Warning would encourage applicants to resolve the issue or withdraw if appropriate. The refund is set at a higher rate than the otherwise maximum refund in order to encourage withdrawal in the face of the potential government-level objection.</p> <p>If the GAC were to provide suggested changes to mitigate concerns that lead to changes in the application, we are concerned that the advice would lead to ad hoc changes to the evaluation process based on subjective assessments.</p> <p>The current process, for good reason, provides very limited ability for applicants to amend their application. Allowing amendments would encourage abuses and, we believe, actually increase the number of controversial applications. For example, if the GAC Early Warning required government approval for an application to go forward, that could be remedied. However, if the GAC advised that the string itself raised impermissible sensitivities, the applicant is not allowed to amend the application to change the string. That applicant could withdraw for a greater refund.</p>
2.1.3	In the event the Board determines to take an action that is not consistent with GAC advice pursuant to Article XI Section 2.1 j and k, the Board will provide a rationale for its decision.	<b>1A</b>	This is settled.
2.2	<b>2. Expand Categories of Community-based Strings</b>		

## Revised ICANN Notes on: the GAC New gTLDs Scorecard, and GAC Comments to Board Response

Item #	GAC Scorecard Actionable Item	Position	Notes
	Amend the provisions and procedures contained in Modules 1 and 3 to clarify the following:		
2.2.1	<p>“Community-based strings” include those that purport to represent or that embody a particular group of people or interests based on historical, cultural or social components of identity, such as nationality, race or ethnicity, religion, belief, culture or particular social origin or group, political opinion, membership of a national minority, disability, age, and/or a language or linguistic group (non exhaustive). In addition, those strings that refer to particular sectors, such as those subject to national regulation (such as .bank, .pharmacy) or those that describe or are targeted to a population or industry that is vulnerable to online fraud or abuse, should also be considered “community-based” strings.</p>	<b>2</b>	<p>It is true that the Board has rejected the idea that community name definitions be expanded to include other sectors and regulated business, but it the Board does not suggest substituting a Community objections procedure for the more proactive and preventative mechanism that would require an affirmative demonstration of Community support.</p> <p>Expansion of categories in a clear way is extremely difficult. This is reflected in the public comment received. Community definitions have been drawn narrowly in the Guidebook to prevent abuses. Even expansion of categories will probably not address GAC concerns in some way as even the expanded definition might leave some genuine area of sensitivity unaddressed.</p> <p>The proposed GAC Early Warning and GAC Advice on New gTLDs procedures are designed to address the GAC concern, i.e., so the GAC can provide input on any application for any reason, eliminating the need for specific definitions. Therefore, the procedures will address sensitive, community, geographic and sector (regulated industry) string issues and give indications to applicants on ways to avoid formal objections.</p>
2.2.2	Applicants seeking such strings should be required to affirmatively identify them as “community-based strings” and must demonstrate their affiliation with the affected community, the specific purpose	<b>2</b>	<p>See section above. The GAC Early Warning and GAC Advice procedures can be applied to any application, regardless of whether the applicant has been self-designated as a community TLD.</p> <p>The GAC’s suggestion would require applicants to designate</p>

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	of the proposed TLD, and –when opportune evidence of support or non-objection from the relevant authority/ies that the applicant is the appropriate or agreed entity for purposes of managing the TLD.		<p>themselves as a community, even if they might not be.</p> <p>Strings may have many meanings, not all of which might implicate a community.</p> <p>Reducing the context for how strings may be used is contrary to an important goal of the new gTLD program, which is to help encourage competition, innovation and consumer choice.</p>
2.2.3	In the event the proposed string is either too broad to effectively identify a single entity as the relevant authority or appropriate manager, or is sufficiently contentious that an appropriate manager cannot be identified and/or agreed, the application should be rejected.	<b>2</b>	As described above and in the accompanying paper, the GAC may object to any application.
2.2.4	The requirement that objectors must demonstrate “material detriment to the broader Internet community” should be amended to reflect simply “material detriment”, as the former represents an extremely vague standard that may prove impossible to satisfy.	<b>1A</b>	<p>Applicant Guidebook has been revised to clarify this aspect of the standards.</p> <p>The new standard in the Guidebook reads: “The objector must prove that the application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted.”</p>
2.2.5	Individual governments that choose to file objections to any proposed “community-based” string should not be required to pay fees.	<b>1B</b>	A companion paper considers several models that balance the government interests and the need for ICANN to maintain a reasonable extent of control over expenditures. It recommends that a pre-determined amount of funding be designated by ICANN for each individual government, for the purpose of funding objection fees where a government wished to file a formal objection. Each

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			<p>government would be allotted an equal amount, and could continue to draw on such funds up to the maximum at its discretion, with the guarantee that at least one objection be fully funded. By fixing the funding amount (instead of the number of objections), governments could tailor the objections to minimize dispute resolution costs. This would provide ability for governments to object without cost and even collaborate on which governments will file objections, while putting a ceiling on the maximum costs.</p> <p>This leaves several options for governments: GAC Early Warning and GAC Advice on New gTLDs (no fee); the loser pays model where governments who win their objections pay no fees; limited number of objections paid by ICANN; and, in an option to be explored further, the possibility that governments faced with high numbers of objectionable applications in their region request extraordinary funding from ICANN or some other source to be identified.</p> <p>Detail and rationale are provided in the paper.</p>
<b>3.</b>	<b>Root Zone Scaling</b>		
3.1.1	<p>The Board should continue implementing a monitoring and alerting system and ensure a) that ICANN can react predictably and quickly when there are indicators that new additions and changes are straining the root zone system, and</p>	<b>1A</b>	<p>Root zone monitoring systems are currently in place. ICANN will work with root zone operators to identify relevant reporting metrics and establish a process to report such metrics to the GAC and the Internet community.</p> <p>Furthermore, a process will be implemented that enables the delegation of TLDs to be slowed or stopped in the event there is a strain to the root zone system.</p> <p>ICANN also commits to review the effects of the new gTLD program on the operations of the root zone system, and defer the delegations in</p>

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			<p>the second round until it is determined that the delegations in the first round did not jeopardize root zone system security or stability.</p> <p>Pleased with concurrence on this issue and taking the next step to execute on its commitments, ICANN has drafted a companion paper to this document describing root zone scaling efforts: monitoring root zone stability and planning ICANN operations for increased delegation rates and provision of services to larger numbers of registries. This plan includes a hold on new delegations after the first round until stability is tested and assured. Included as an annex to that paper is a draft document: Root Server System Management Strategy. This document is the first draft of the plan to monitor root zone performance.</p>
3.1.2	b) that the processes and possible resulting restorative measures that flow from its results are fully described in the Application Guidebook before the start of the first application round.		See 3.1.1
3.2	The Board commits to defer the launch of a second round or batch of applications unless an evaluation shows that there are indications from monitoring the root system etc. that a first (limited) round did not in any way jeopardize the security and stability of the root zone system.		See 3.1.1
3.3	The Board commits to make the second round or batch of applications contingent on a clean sheet from full technical and administrative assessment of impact of the first round with recommendations which should go out to public comment for		See 3.1.1

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	approval.		
3.4	The Board commits to avoid the possibility that other activities will be impacted by the possible diversion of resources to processing new gTLD applications.	<b>1A</b>	ICANN commits that the operation of the IANA functions and ICANN's coordination of the root zone system will not be negatively affected. The companion paper on Root Zone Scaling describes staffing plans to ensure ongoing day-to-day operations at ICANN. These operations include delegation, redelegation, root zone changes, contractual compliance and registry liaison. Be advised that these calculations of manpower are not yet part of the ICANN operational plan. ICANN will continue to test these assumptions in order to create and execute an operating plan that addresses these requirements.
3.5	The Board should ensure that ICANN can effectively address the specific needs of applicants from different, perhaps non-English speaking cultures, and with different legal environments.	<b>1A</b>	ICANN's planning routinely takes into account non-English speaking and different legal environments. We will ensure that planning is included for handling new gTLDs.
3.6	The Board should monitor the pace and effectiveness of ICANN's management of contract negotiations for new gTLDs in a potential situation of 200 to 300 simultaneous applications and evaluations.	<b>1A</b>	
3.7	The Board is confident that all relevant actors (IANA, root server operators, etc) are sufficiently informed about what is expected from them in terms of work loadings and resources in order to fulfil their respective roles, in particular the pre delegation checking, approvals, implementation of potentially 200 to 300	<b>1A</b>	

**Revised ICANN Notes on: the GAC New gTLDs Scorecard, and GAC Comments to Board Response**

Item #	GAC Scorecard Actionable Item	Position	Notes
	root zone changes a year and expected post-delegation changes.		
<b>4.</b>	<b>Market and Economic Impacts</b>		
4.1	<p>Amend the final Draft Applicant Guidebook to incorporate the following:</p> <p style="padding-left: 40px;">Criteria to facilitate the weighing of the potential costs and benefits to the public in the evaluation and award of new gTLDs.</p>	<b>1A</b>	<p>The Board notes and appreciates the revised GAC proposal that the Board should identify criteria to facilitate the weighing of the potential costs and benefits to the public in the evaluation and award of new gTLDs as part of the new gTLD program review as specified in section 9.3 of the Affirmation of Commitments.</p> <p>The New gTLD Program will be reviewed, as specified in section 9.3 of the Affirmation of Commitments. This will include consideration of the “extent to which the introduction or expansion of gTLDs has promoted competition, consumer trust and consumer choice, as well as effectiveness of: (a) the application and evaluation process, and (b) safeguards put in place to mitigate issues involved in the introduction or expansion.”</p>
4.2	A requirement that new gTLD applicants provide information on the expected benefits of the proposed gTLD, as well as information and proposed operating terms to eliminate or minimize costs to registrants and consumers.	<b>1A</b>	<p>The Guidebook will be amended, i.e., the applicant questions will be augmented, to include questions requiring new gTLD applicants to provide information on the expected benefits of the proposed gTLD, as well as information and proposed operating terms to eliminate or minimize costs to registrants and consumers.</p> <p>ICANN retained economists familiar with these issues to suggest which questions should be asked.</p> <p>After some discussion and iteration, questions have been developed and are provided in the annex to the explanatory memorandum on this topic. The questions will be public facing, i.e., the answers will be published. The answers will not be used to score or otherwise evaluate the applications.</p>

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			<p>Two series or sets of questions are now included in the Guidebook, (see explanatory memorandum on this subject) headed by:</p> <ol style="list-style-type: none"> <li>1. How do you expect that your proposed gTLD will benefit registrants, Internet users, and others?</li> <li>2. What operating rules will you adopt to eliminate or minimize social costs (e.g., time or financial resource costs, as well as various types of consumer vulnerabilities)? What other steps will you take to minimize negative consequences/costs imposed upon consumers?</li> </ol>
4.3	Due diligence or other operating restrictions to ensure that Community-based gTLDs will in fact serve their targeted communities and will not broaden their operations in a manner that makes it more likely for the registries to impose costs on existing domain owners in other TLDs.	<b>1A</b>	ICANN will continue to work to ensure that post-delegation dispute mechanisms adequately address this concern. The ICANN Board resolved that the GNSO should be provided a briefing paper and should examine this question (see, <a href="http://icann.org/en/minutes/resolutions-10dec10-en.htm">http://icann.org/en/minutes/resolutions-10dec10-en.htm</a> - 8). The GNSO was provided that paper, including a proposed model for determining under which circumstances a community TLD registry operator may amend the registration restriction in the registry agreement. The procedure is intended to allow changes to Community TLD restrictions, recognizing that changes will be necessary to best meet community needs.
<b>5.</b>	<b>Registry – Registrar Separation</b>		
	Amend the proposed new registry agreement to restrict cross-ownership between registries and registrars, in those cases where it can be determined that the registry does have, or is likely to obtain, market power.	<b>2</b>	As indicated in the original Board Notes: "ICANN sought to implement a marketplace model that would enhance competition, opportunities for innovation and increase choice for consumers while preventing abuses in cases where the registry could wield market power. While lifting restrictions on cross-ownership, ICANN reserves the right to refer issues to appropriate competition authorities if there are apparent abuses of market power. As previously resolved by the Board, registry agreements will include requirements and restrictions on any inappropriate or abusive conduct arising out of registry-registrar cross

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			<p>ownership, including without limitations provisions protecting against misuse of data or violations of a registry code of conduct."</p> <p>The GAC Comments from 12 April 2011 stated that "The Board response is considered insufficient by the colleagues of some GAC members who are responsible for Competition and anti-Trust issues. They have requested that ICANN provide a more reasoned argument as to why they have rejected the GAC's proposal and why the Board feels that ex-ante measures are less preferable to ex-post measures for minimising problems associated with anti-competitive behavior."</p> <p>To answer: ICANN considered several options with respect to the vertical separation issue, including a blanket prohibition against cross-ownership by registries with market power. The problem with such an ex ante prohibition is that it is overly restrictive; that is, a prohibition of vertical integration based purely on market power is likely to deprive consumers of the competitive benefits of cross-ownership. From a consumer welfare perspective, a better approach is to allow generally pro-competitive vertical integration while referring any potentially suspect arrangements to expert competition enforcement authorities, who can then take action when their ex post expert evaluation determines it is appropriate. This is particularly important because it is difficult to accurately measure market power. Market definition and the evaluation of market power are contentious issues in most antitrust cases and often require complex economic and econometric analysis. Market share can be used as a proxy, but antitrust authorities around the world recognize that it is an imperfect proxy. Moreover, there are various ways to measure market share. Delegating this expert analysis and post ante determination to competition authorities avoids the problem of mistakenly ex ante deterring competitively beneficial vertical integration while also ensuring that consumers are protected</p>

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Item #	GAC Scorecard Actionable Item	Position	Notes
			when economic conditions merit competition policy intervention.
<b>6.</b>	<b>Protection of Rights Owners and consumer protection issue</b>		
6.1.1	<p><b>1. Rights Protection: Trademark Clearing House (TC)</b></p> <p>The TC should be permitted to accept all types of intellectual property rights that are recognized under the national law of the country or countries under which the registry is organized or has its principal place of business. The only mandatory requirement for new registry operators will be to recognize national and supranational trademark registrations issued before June 26, 2008 and court-validated common law trademarks.</p>	<b>1A</b>	<p>Overall - Based on the GAC Indicative Scorecard, discussions in the Silicon Valley meeting, and follow-up with stakeholder groups, ICANN has made several changes in Trademark Protections in an effort to meet GAC Scorecard requests.</p> <p>(a) All nationally or multi-nationally registered trademarks will be accepted into the Clearinghouse. The proposed date cut-off will not be utilized as a requirement for entry into the Clearinghouse.</p> <p>(b) All trademarks that have been validated via court proceeding, or have protection under statute or treaty in effect at the time the mark is submitted to the Clearinghouse for inclusion, will be accepted into the Clearinghouse.</p> <p>(c) All marks that constitute intellectual property will now be accepted into the Clearinghouse.</p> <p>(d) Protections afforded to trademark registrations do not extend to applications for registrations, marks within any opposition period or registered marks that were the subject of successful invalidation, cancellation or rectification proceedings.</p> <p>For Trademark Claims services - Registries must recognize and honor all marks in (a) and (b) above.</p> <p>For Sunrise services – Registries must recognize and honor all marks in (a) and (b) above, provided that:</p> <p>(i) the holders of marks in (a) above have submitted proof of</p>

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			<p>(ii) use of the mark, which can be demonstrated by a declaration and one specimen of current use; and the holders of marks in (b) above have been validated by a court or protected by a statute or treaty on or before 26 June 2008.</p> <p>The Clearinghouse must clearly note when entering the marks into the database, which marks are registered trademarks and which marks have been submitted with proof of use.</p>
6.1.2	Sunrise services and IP claims should both be mandatory for registry operators because they serve different functions with IP claims serving a useful notice function beyond the introductory phase.	<b>1A</b>	<p>The IRT and STI suggested an either/or approach. After discussion with the GAC and some other community members, including those representing trademark interests, the Board has determined to make both a limited Trademark Claims service, and Sunrise service, mandatory. All registries will be required to offer: (i) a Sunrise program, and (ii) for at least 60 days from launch, a Trademark Claims service using the Clearinghouse database. Thereafter, utilization of Trademark Claims services will be at the registry’s discretion.</p> <p>The adjusted program provides flexibility to holders of registered trademarks from all jurisdictions because it provides the trademark holders with the option to receive notice through the Clearinghouse when someone else is attempting to register a domain name using the mark, rather than paying to obtain a sunrise registration itself.</p>
6.1.3	IP claims services and sunrise services should go beyond exact matches to include exact match plus key terms associated with goods or services identified by the mark) e.g. “Kodakonlineshop”) and typographical variations identified by the rights holder.	<b>2</b>	Sunrise services provide trademark holders with “first rights” in domain names, and as such must be limited to identical matches. Moreover, unlike the URS, where a qualified Examiner will be capable of using discretion to determine if a mark is identical or confusingly similar, no such discretion is afforded the Trademark Clearinghouse that will be used for the mandatory 60-day Trademark Claims services. The Clearinghouse should not and will not have discretion in what marks

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			are deemed anything but an identical match.
6.1.4	All trademark registrations of national and supranational effect, regardless of whether examined on substantive or relative grounds, must be eligible to participate in the pre-launch sunrise mechanisms.	<b>1A</b>	<p>All nationally or multi-nationally (supranational) registered trademarks, regardless of where registered and whether examined on substantive or relative grounds, will be eligible to participate in either the 60-day Trademark Claims service or Sunrise service, subject to the following:</p> <ul style="list-style-type: none"> <li>(a) For marks in the Clearinghouse to be recognized and honored in Sunrise services, proof of current use of those mark must have been submitted to the Clearinghouse before the Sunrise service begins.</li> <li>(b) Use of the trademark may be demonstrated by providing a declaration from the trademark holder and one specimen of current use.</li> </ul>
6.1.5	Protections afforded to trademark registrations do not extend to applications for registrations, marks within any opposition period or registered marks that were the subject of successful invalidation, cancellation or rectification proceedings.	<b>1A</b>	Agreed.
6.1.6	The IP claims service should notify the potential domain name registrant of the rights holder's claim and also notify the rights holder of the registrant's application for the domain name.	<b>1A</b>	Agreed. Note: the notification to the rights holder will be sent promptly after the potential registrant has acknowledged the Trademark Claim and registers the name.
6.1.7.1	The TC should continue after the initial launch of each gTLD.	<b>1A</b>	The Trademark Clearinghouse will be an ongoing operation. The Sunrise services operate as a pre-launch mechanism and Trademark

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Item #	GAC Scorecard Actionable Item	Position	Notes
			<p>Claims services operate during the first 60 days that registration in the registry is open for general registration.</p> <p>Trademark holders will continue to be able to subscribe to ongoing "watch" services that will be able to utilize the Centralized Zone File Access system in order to efficiently monitor registrations across multiple gTLDs.</p> <p>The Board originally marked this as a 2 and asked for clarification from the GAC. Based on discussions and comments, the Board has determined that the parties were in agreement and thus this item should have been marked 1A.</p>
6.1.7.2	Rights holders, registries and registrars should all contribute to the cost of the TC because they all benefit from it.	<b>1B</b>	Trademark holders will pay the Trademark Clearinghouse when the rights holders register their marks, registries will pay the Trademark Clearinghouse when administering their Trademark Claims and Sunrise services. In turn registrars will pay the registries when using their rights protection mechanisms, and registrants will pay the registrars when using the registrars' services to manage access to rights protection mechanisms.
6.2.1	<p><b>2. Rights Protection: Uniform Rapid Suspension (URS):</b></p> <p>Significantly reduce the timescales. See attached table for proposed changes.</p>	<b>1A</b>	Agreed.
6.2.2	The complaint should be simplified by replacing the 5,000 word free text limit + unlimited attachments [para 1.2] with a simple pro forma standardised wording	<b>1A</b>	Agreed. Note: The word limit will not apply to respondents.

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	with the opportunity for not more than 500 words of freeform text and limit the attachments to copies of the offending website.		
6.2.3	Decisions should be taken by a suitably qualified 'Examiner' and not require panel appointments.	<b>1A</b>	Examiners with demonstrably relevant legal background, such as in trademark law, will be appointed by the URS Provider. Only one Examiner will be appointed per URS proceeding.
6.2.4	Where the complaint is based upon a valid registration, the requirement that the jurisdiction of registration incorporate substantive examination (paras 1.2f (i) and 8.1a) should be removed.	<b>1A</b>	<p>There is no requirement that any registration of a trademark must include substantive evaluation.</p> <p>Each trademark registration must be supported by evidence of use in order to be the basis of a URS complaint.</p> <p>Use of the trademark may be demonstrated by providing a declaration from the trademark holder along with one specimen of current use that the Clearinghouse will validate upon receipt. Proof may also be provided directly with the URS Complaint.</p> <p>After review of the comments above, the Board has determined that this item be changed to 1A.</p>
6.2.5	If, as is expected in the majority of cases, there is no response from the registrant, the default should be in favour of the complainant and the website locked. The examination of possible defences in default cases according to para 8.4(2) would otherwise give an unjustified privilege to the non-cooperating defendant.	<b>1A</b>	<p>An Examiner will review the merits of each Complaint to ensure that the standard is met, even in the event of a default. The Examiner will not be required to imagine possible defenses.</p> <p>Seeking clarification on this GAC advice, the Board posed the following question to the GAC during the Brussels meeting "Is the GAC advising that, when no response is filed, there be no Examination of a complaint? Or it is just advising that the reference to possible defenses</p>

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			<p>be omitted?" <a href="http://icann.org/en/topics/new-gtlds/questions-on-scorecard-protection-of-rights-28feb11-en.pdf">http://icann.org/en/topics/new-gtlds/questions-on-scorecard-protection-of-rights-28feb11-en.pdf</a></p> <p>In response, the GAC stated "The GAC is advising that the Guidebook be amended by deleting 8.4 (2) because the Examiner should not be placed in the position of having to anticipate all potential defences where none was presented. However, the Examiner should still evaluate the complaint on its merits. The complainant must still meet his/her burden." <a href="http://icann.org/en/topics/new-gtlds/gac-replies-rights-protection-questions-09mar11-en.pdf">http://icann.org/en/topics/new-gtlds/gac-replies-rights-protection-questions-09mar11-en.pdf</a></p> <p>In light of the GAC's clarification, this point has been changed to 1A.</p>
6.2.6	The standard of proof (para 8.2) should be lowered from "clear and convincing evidence" to a preponderance of evidence".	<b>2</b>	<p>The principle of the URS is that it should only apply to clear-cut cases of abuse.</p> <p>"Clear and convincing" is the burden of proof that was recommended by the IRT and endorsed by the STI.</p>
6.2.7	The "bad faith" requirement in paras 1.2f), 1.2g) and 8.1c) is not acceptable. Complainants will in only rare cases prevail in URS proceedings if the standards to be fulfilled by registrants are lax. Correspondingly, the factors listed in paras 5.7a) ("bona fide") and b) "been commonly known by the domain name") can hardly allow a domain name owner to prevail over the holders of colliding trademarks.	<b>2</b>	The standard applied for the URS is based on the UDRP standard. Both require a finding of bad faith. Given that the URS is meant only to apply to the most clear-cut cases of abuse, bad faith shall remain a requirement.
6.2.8	A 'loser pays' mechanism should be added.	<b>1B</b>	A straight loser pays mechanism was considered and discussed

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			<p>extensively by the IRT, but ultimately not recommended. Rationale includes that the UDRP does not have a loser-pays mechanism and the fact that it is unlikely complainants would be able to effectively collect based on clear-cut cases of abuse, since the names in question will already have been suspended.</p> <p>Notwithstanding, after participating in further consultations with the GAC and representative of trademark interests, the Board has decided to include a limited “loser pays” mechanism that was originally developed by the IRT. Specifically, complaints involving twenty-six (26) or more domain names will be subject to a “Response Fee” which will be refundable to the prevailing party. Under no circumstances shall the Response Fee exceed the fee charged to the Complainant.</p> <p>Given the inclusion of the Response Fee, this item is now 1B.</p>
6.2.9	Registrants who have lost five or more URS proceedings should be deemed to have waived the opportunity to respond to future URS complaints (this amendment corresponds to the “two strikes” provision which applies to rights holders).	<b>2</b>	Due process principles require that every registrant should always have the opportunity to present a defense.
6.2.10.1	However, there should be a clear rationale for appeal by the complainant.	<b>1A</b>	<p>In response to the Board’s request for clarification, the GAC clarified that either party seeking appeal should demonstrate a clear basis for objecting to the decision. The Board agrees that an appellant must identify the specific grounds on which the party is appealing, including why the appellant claims the Examiner’s Determination was incorrect.</p> <p>In light of the GAC’s clarification, this item is now 1A.</p>
6.2.10.2	The time for filing an appeal in default	<b>1B</b>	The IRT originally suggested a URS without any appeal process. The STI

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	cases must be reduced from 2 years to not more than 6 months.		<p>suggested the inclusion of an appeal process (without any mention of a limitation on the ability to seek relief from a default). In response to comments, the Applicant Guidebook was revised to include a two-year limitation period on the opportunity to seek relief from a default.</p> <p>After consideration of the GAC advice, the Board has determined that the time for a Registrant to seek relief from default should be limited to six months, but the Respondent may seek an extension of up to a further six months (for the total of up to one year) if the Respondent requests the additional time before the initial six month period has expired.</p>
6.2.10.3	In addition, the examination of possible defences in default cases according to para 8.4(2) means an unjustified privilege of the non-cooperating defendant.	<b>1A</b>	See 6.2.5
6.2.11	The URS filing fee should be US\$200-US\$300 and minor administrative deficiencies should not result in dismissal of the URS complaint.	<b>1B</b>	ICANN will negotiate with URS service providers for the best prices and services. The fee range mentioned will be a target.
6.2.12	A successful complainant should have the right of first refusal for transfer of the disputed domain name after the suspension period so that the complainant is not forced to pursue a UDRP proceeding to secure a transfer.	<b>2</b>	The Board initially agreed to this item in the GAC scorecard. Upon consideration of significant community feedback, however, the Board has determined that the Guidebook position on the available remedy in a URS proceeding should stand. That is, domains shall be suspended for the duration of the registration period and the successful complainant will be provided an option to extend the registration period of the name for an additional year after expiration of the initial registration period (at commercial rates). The suspension remedy was what the IRT recommended and the additional one-year extended-registration was recommended by the STI. Moreover, as stated in

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			public comments on this issue, the URS was and is not meant to replace or mirror the UDRP transfer remedy. Accordingly, this item has been changed to a 2.
6.2.13	The URS should go beyond 'exact' matches and should at least include exact + goods/other generic words e.g. "Kodakonlineshop".	<b>1A</b>	As recommended by the IRT, the URS applies to registrations that are identical or confusingly similar to protected marks as described in the Guidebook. As part of the public comment period, trademark owners stated that they agree that this standard is appropriate here, and that this is what was meant by this GAC comment.
6.3.1	<p><b>3. Rights Protection: Post-delegation Dispute Resolution Procedure (PDDRP)</b></p> <p>The standard of proof be changed from "clear and convincing evidence" to a "preponderance of evidence".</p>	<b>2</b>	This was the standard developed by the IRT and will not be revised.
6.3.2	The second level registrations that form the underlying basis of a successful PDDRP complaint should be deleted.	<b>2</b>	The registrants are not parties to the proceedings, thus keeping a registrant from using the domain name or stripping the name from the registrant should be effected through an alternative proceeding, such as URS or UDRP. Note that to the extent registrants have been shown to be officers, directors, agents, employees, or entities under common control with a registry operator, then deletion of registrations may be a recommended remedy.
6.3.3	The requirement of "substantive examination" in para 9.2.1(i) should be deleted.	<b>1A</b>	<p>There is no requirement that any registration of a trademark must include substantive evaluation.</p> <p>Each trademark registration must be supported by evidence of use in the Clearinghouse in order to be the basis of a PDDRP complaint.</p>

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			Use of the trademark may be demonstrated by providing a declaration from the trademark holder along with one specimen of current use. Further discussion should take place relating to proof of use.
6.3.4	A new para 6.1 a) be added: “being identical to the complainant’s mark in relation to goods and services which are identical to those for which the complainant’s mark is registered. This would not apply if the registrant has a better right to the mark. In particular the registrant will in normal circumstances have a better right if the mark has been registered prior to the registration of the complainant’s mark.”	<b>2</b>	Section 6.1 sets out the standards for filing a PDDRP against a Registry Operator relating to the top-level domain. The GAC is requesting that, in some cases, a PDDRP complainant would prevail merely by having a mark identical to the registration and “a better right” to that mark. The existing standard requires that some harm must result to the trademark holder as a result of the registration. The Board does not believe that being identical to the complainant’s mark is proper as a sole basis for allowing a PDDRP complaint. If a competing trademark holder wants to challenge the Registry Operator for simply operating the TLD, it has the right to file a Protection of rights pre-delegation objection and seek a variety of other court remedies.
6.3.5	Regarding the second level (para 6.2), the registrant operator should be liable if he/she acts in bad faith or is grossly negligent in relation to the circumstances listed in para 6.a)-d).	<b>2</b>	Changing the standard from requiring "affirmative conduct" to “gross negligence” would effectively create a new policy imposing liability on registries based on actions of registrants.
6.3.6	The requirement in para 7.2.3 lit.d) that the complainant has to notify the registry operator at least 30 days prior to filing a complaint is burdensome and should be reduced to 10 days if not deleted entirely.	<b>2</b>	The current requirement is in place to provide the registry with a reasonable amount of time to investigate and take appropriate action if a trademark holder notifies the registry that there may be infringing names in the registry.
6.3.7	Para 19.5 should be amended as follows: “In cases where the Expert Determination decides that a registry operator is liable	<b>1A</b>	ICANN agrees that it will impose appropriate remedies that are "in line" with the determination. It should be noted however that ICANN is ultimately responsible for determining the appropriate remedy.

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	under the standards of the Trademark PDDRP, ICANN will impose appropriate remedies that are in line with the Determination.		
6.4.1	<p><b>4. Consumer Protection</b></p> <p>Amend the "Maintain an abuse point of contact" paragraph in the DAG to include government agencies which address consumer protection:</p>	<b>1B</b>	<p>In its letter dated 12 April 2011, the GAC has provided suggested changes to the Registry Agreement as follows:</p> <p>A registry operator must respond in a timely manner to a request concerning any name registered in the TLD from any government agency that is conducting a lawful investigation or official proceeding inquiring into a violation of or failure to comply with any criminal or civil statute or any regulation, rule, or order legally issued pursuant thereto.</p> <p>ICANN appreciates this input and has amended to the text to require Registry Operators to take reasonable steps and respond to any reports (including from law enforcement and governmental consumer protection agencies) of illegal conduct utilizing the Registry TLD.</p> <p>The purpose of this text amendment is to ensure that all reports of abuse are appropriately considered within a reasonable time period.</p>
6.4.2	A registry operator must assist law enforcement, government agencies and agencies endorsed by governments with their enquiries about abuse complaints concerning all names registered in the TLD, including taking timely action, as required, to resolve abuse issues.	<b>1B</b>	See 6.4.1
6.4.3	Ensure that ICANN's contract compliance	<b>1A</b>	In its letter dated 12 April 2011, the GAC respectfully requests ICANN,

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	<p>function is adequately resourced to build confidence in ICANN’s ability to enforce agreements between ICANN and registries and registrars.</p>		<p>in the upcoming weeks, to identify the amount of personnel it intends to hire to support the compliance function and the timeline for hiring. In addition the GAC would like to know how many staff ICANN intends to have in place prior to the expected launch of new gTLDs.</p> <p>ICANN has undertaken studies across various departments, including contract compliance, to determine the impact to processes, people, and systems resulting from the delegation of strings. An initial analysis projects contract compliance staff to grow from its current level to specified numbers indicated in an explanatory memo. These numbers will continue to be refined as analysis continues.</p> <p>Note, the delegation of new strings may not occur until approximately one year after the launch of the program. However, ICANN will continue to update these plans as the number of delegations becomes clearer and processes change and those plans will be shared with the GAC and other community members when available.</p>
6.4.4	<p><b>Vetting of certain strings</b> gTLD strings which relate to any generally regulated industry (e.g. .bank, .dentist, .law) should be subject to more intensive vetting than other non-geographical gTLDs.</p>	<b>1B</b>	<p>In its letter dated 12 April 2011, the GAC has requested that ICANN conduct more stringent vetting of all new gTLD applicants to ensure that registries are not operated by entities/individuals who will use the platform for criminal purposes or otherwise abuse the domain name system.</p> <p>ICANN agrees with this recommendation. Although it is nearly impossible to ensure no "bad actors" secure a new top-level domain ICANN has implemented several measures to minimize this risk. Those measures include:</p> <ul style="list-style-type: none"> <li>• Expanding the scope of the background screening check to include other crimes as suggested by the GAC. This also includes obtaining input from selected law enforcement on the selection of a</li> </ul>

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			<p>background screening service provider – see 11.3.</p> <ul style="list-style-type: none"> <li>• Adding language to the Registry Agreement that requires Registry Operators to take reasonable steps and respond to any reports (including from law enforcement and governmental consumer protection agencies) of illegal conduct utilizing the Registry TLD. Failing to comply with this provision could lead to termination of the Registry Agreement.</li> <li>• Making public the names and titles of key officers, directors, partners and controlling shareholders of each applicant for comment.</li> <li>• Providing a GAC Early Warning process that allows members of the GAC or any individual government through the GAC to provide a notice to certain applicants.</li> </ul>
<b>7.</b>	<b>Post-Delegation Disputes</b>		
7.1	<p>Change the wording in the sample letter of Government support in AG back to the wording in DAGv4 and keeping the new paragraph 7.13 of the new gTLD registry agreement with the changed wording from “may implement” to “will comply”. E.g change the wording from “may implement” back to “will comply” with a legally binding decision in the relevant jurisdiction.</p>	<b>1B</b>	<p>ICANN has previously indicated that it will modify the suggested wording of the letter of support or non-objection, and make clear its commitments to governments in additional text of the Applicant Guidebook, and in its response the GAC has acknowledged and accepted that modification.</p> <p>The original Board Notes stated that "the registry agreement will continue to indicate that ICANN 'may implement' instead of 'will comply' with such decisions for legal reasons. As discussed previously with the GAC, ICANN’s commitment to comply with legally binding decisions is made to governments, not to registries, Therefore, it is not necessarily in the interests of ICANN, or of governments, to place that obligation in registry agreements, giving registry operators the ability, and perhaps duty, to force ICANN to implement decisions in every</p>

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			<p>case. (ICANN has a mechanism to enforce its contracts with registry operators.)"</p> <p>In order to attempt to address the GAC's concerns and provide further comfort to governments that ICANN will implement court orders, ICANN proposes to modify section 7.13 of the registry agreement to read as follows: "ICANN will respect any order from a court of competent jurisdiction, including any orders from any jurisdiction where the consent or non-objection of the government was a requirement for the delegation of the TLD. Notwithstanding any other provision of this agreement, ICANN's implementation of any such order will not be a breach of this Agreement."</p> <p>In its response, the GAC position is that ICANN change the agreement provision from a right of ICANN (ICANN may implement) into a duty that ICANN will owe the registry (ICANN will implement). The GAC's rationale asserts that this will give governments assurance that governments will be able to "enforce the conditions given when providing a letter of support or non-objection." The GAC argues that if ICANN does not give registry operators the power to force ICANN to implement such court orders that this will discourage governments from granting the support that governments have asked ICANN to require as a condition necessary for ICANN to delegate certain "geographic" TLD strings.</p> <p>ICANN has previously suggested that governments could enforce any conditions agreed to with the registry operator through other means, either through an enforceable bilateral agreement between the</p>

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			<p>government and operator, or by insisting that the operator subject itself to the government's jurisdiction either through consent or a requirement that the operator maintain a presence inside the jurisdiction.</p>
7.2	<p>In addition describe in the AG that ICANN will comply with a legally binding decision in the relevant jurisdiction where there has been a dispute between the relevant government or public authority and registry operator.</p>	<b>1B</b>	<p>The Guidebook language now states that, “Applicants should be aware that ICANN has committed to governments that, in the event of a dispute between a government (or public authority) and a registry operator that submitted documentation of support from that government or public authority, ICANN will comply with a legally binding order from a court in the jurisdiction of the government or public authority that has given support to an application.”</p> <p>The initial Board Notes stated that this required further discussion as it may in some cases amount to a redelegation request. The notes also stated that there could be multiple jurisdictions that have given their support to one application (e.g., multiple "Springfield"s), thus, it may not be appropriate to implement a particular action based on one such decision.</p> <p>The GAC response suggests changing the wording to “final legally binding decision”.</p> <p>The GAC is essentially asking ICANN to expand the respect afforded to court orders to also include any "final legally binding decision", which the GAC notes would include "an administrative decision." ICANN is concerned that such a provision could have a very broad scope (including "decisions" from multiple overlapping or competing local and national governmental agencies. (For example, agencies from the</p>

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			governments of the City of Los Angeles and the County of Los Angeles might theoretically issue inconsistent administrative decisions regarding the operation of a TLD registry operating in Los Angeles.) ICANN is not equipped to sort out what constitutes a "final legally binding decision" in every jurisdiction in the world, and will be on much clearer ground working with orders from courts. Courts would presumably be available to confirm any legally binding decisions, and as noted above ICANN has committed to respect such orders.
<b>8.</b>	<b>Use of geographic names</b>		
8.1.1.1	<b>1. Definition of geographic names</b> Implement a free of charge objection mechanism would allow governments to protect their interest	<b>1B</b>	As described in Issue 2 above, ICANN proposes procedures for GAC Early Warning and GAC Advice that may be applied to geographic names. In addition, the response to issue 2 also describes a process where, for individual governments, ICANN will provide limited financial support for objections.
8.1.1.2	and to define names that are to be considered geographic names.	<b>2</b>	The proposed GAC Early Warning and GAC Advice on New gTLDs procedures are designed to address the GAC concern, i.e., so the GAC can provide input any application for any reason, eliminating the need for specific definitions. Therefore, the procedures will address sensitive, community, geographic and sector (regulated industry) string issues and encourage efforts to prevent formal objections.
8.1.2	This implies that ICANN will exclude an applied for string from entering the new gTLD process when the government formally states that this string is considered to be a name for which this country is commonly known as.	<b>1B</b>	The Board appreciates the need to ensure national interests in those cases where country names are not listed in the established list.  Language has been added to the Guidebook, augmenting the definition of geographic names that, "A string shall be considered to be a country or territory name if: ... it is a name by which a country is commonly known, as demonstrated by evidence that the country is recognized by that name by an intergovernmental or treaty organization."
8.1.3	Review the proposal in the DAG in order to ensure that this potential [city name	<b>2</b>	The Board notes the GAC comment that the post-delegation mechanisms might not be effective in cases where the application has

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	<p>applicants avoiding government support requirement by stating that use is for non-community purposes] does not arise. Provide further explanations on statements that applicants are required to provide a description/purpose for the TLD, and to adhere to the terms and condition of submitting an application including confirming that all statements and representations contained in the application are true and accurate.</p>		<p>not been designated as a community-based TLD or a geographic TLD, or where the government has some legal right to the name. The GAC Early Warning and GAC Advice on New gTLDs processes provide the best opportunities to address the situation. Applications including city-names as TLD strings can be the subject of both those processes.</p> <p>It should be noted that the application requires applicants to describe the purpose of the TLDs, this information will be used to inform evaluation, objections, and importantly, the GAC as it considers public policy implications of the application and string.</p>
8.1.4	<p>Governments should not be required to pay a fee for raising objections to new gTLD applications. Implement a free objection mechanism would allow governments to protect their interest.</p>	<b>1B</b>	<p>Borrowing from the same issue as in section 2:</p> <p>A companion paper considers several models that balance the government interests and the need for ICANN to maintain a reasonable extent of control over expenditures. It recommends that a pre-determined amount of funding be designated by ICANN for each individual government, for the purpose of funding objection fees where a government wished to file a formal objection. Each government would be allotted an equal amount, and could continue to draw on such funds up to the maximum at its discretion, with the guarantee that at least one objection be fully funded. By fixing the funding amount (instead of the number of objections), governments could tailor the objections to minimize dispute resolution costs. This would provide ability for governments to object without cost and even collaborate on which governments will file objections, while putting a ceiling on the maximum costs.</p> <p>Detail and rationale are provided in the paper.</p>

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8.2.1	<p><b>2. Further requirements regarding geographic names</b></p> <p>The GAC clarifies that it is a question of national sovereignty to decide which level of government or which administration is responsible for the filing of letters of support or non-objection. There may be countries that require that such documentation has to be filed by the central government - also for regional geoTLDs; in other countries the responsibility for filing letters of support may rest with sub-national level administrations even if the name of the capital is concerned. GAC requests some clarification on this in the next version of the Applicants Guidebook.</p>	<b>1A</b>	<p>This principle is agreed, and this can be clarified in the Guidebook. ICANN invites governments to identify appropriate points of contact on this issue.</p>
8.2.2	<p>According to the current DAG applications will be suspended (pending resolution by the applicants), if there is more than one application for a string representing a certain geographic name, and the applications have requisite government approvals. The GAC understands such a position for applications that have support of different administrations or governmental entities. In such circumstances it is not considered appropriate for ICANN to determine the most relevant governmental entity; the</p>	<b>1A</b>	<p>ICANN will continue to suspend processing of applications with inconsistent/conflicting support, but will allow multiple applicants all endorsed by the same authority to go forward, when requested by the government.</p> <p>This area needs further discussion on the potential situations that could lead to redelegation requests.</p>

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	<p>same applies, if one string represents different geographic regions or cities. Some governments, however, may prefer not to select amongst applicants and support every application that fulfils certain requirements. Such a policy may facilitate decisions in some administrations and avoid time-consuming calls for tenders. GAC encourages ICANN to process those applications as other competing applications that apply for the same string.</p>		
<b>9.</b>	<b>Legal Recourse for Applications</b>		
9.	<p>Seek legal advice in major jurisdiction whether such a provision might cause legal conflicts – in particular but not limited to US and European competition laws. If ICANN explains that it has already examined these legal questions carefully and considering the results of these examinations still adheres to that provision, GAC will no longer insist on its position. However, the GAC expects that ICANN will continue to adhere to the rule of law and follow broad principles of natural justice. For example, if ICANN deviates from its agreed processes in coming to a decision, the GAC expects that ICANN will provide an appropriate mechanism for any complaints to be heard.</p>	<b>1A</b>	<p>As discussed with the GAC, ICANN has examined these legal questions carefully and considering the results of these examinations still adheres to this provision. ICANN will clarify in the Applicant Guidebook that: if ICANN deviates from its agreed processes in coming to a decision, ICANN's internal accountability mechanisms will allow complaints to be heard.</p> <p>In its response, the GAC stated that it "welcomes the Board's clarification that the legal implications of the clause have been considered for various jurisdictions. The GAC appreciates the Board's notice that the Applicant Guidebook will be amended to clarify that internal accountability mechanisms will allow complaints to be heard."</p>

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Item #	GAC Scorecard Actionable Item	Position	Notes
<b>10.</b>	<b>Providing opportunities for all stakeholders including those from developing countries</b>		
10.1	<p><b>Main issues</b></p> <p><b>1. Cost Considerations</b></p> <p>Set technical and other requirements, including cost considerations, at a reasonable and proportionate level in order not to exclude stakeholders from developing countries from participating in the new gTLD process.</p>	TBD	<p>ICANN’s Board recognized the importance of an inclusive New gTLD Program and issued a Resolution forming a Joint Working Group (JAS WG) which is underway. ICANN would like to receive the report of the JAS WG as soon as possible. JAS WG is requested to provide a possible deadline for his work during the ICANN meeting in SFO allowing the Board to act.</p> <p>It is noted that one of the challenges in developing support mechanisms for applicants is to ensure that such support is actually received by those applicants with the most need, rather than being used advantageously by other participants. This issue has also been taken into account in the work of the JAS WG.</p> <p>The minimum technical requirements for operating a registry are expected to be consistent across applications.</p> <p>The Board notes that the GAC recommends a 70% fees reduction for developing country applicants, free for least developed countries and shares the concern to determine real needy applicants. The fees reductions recommended by the GAC have been passed on to the JAS WG. The Board is looking forward to receiving the Final Report and notes that, given the cost recovery policy, sources of funds must be identified.</p> <p>The Board notes the GAC seeks further clarification about the certain mechanisms for technical and logistical support. ICANN has budgeted a sum of \$300,000 to provide non-financial support to potential applicants. The Board has resolved that the targets include outreach and education to encourage participation across all regions.</p>

## Revised ICANN Notes on: the GAC New gTLDs Scorecard, and GAC Comments to Board Response

Item #	GAC Scorecard Actionable Item	Position	Notes
			<p>ICANN will publish a list of organizations that request assistance and organizations that state an interest in assisting with additional program development, for example pro-bono consulting advice, pro-bono in-kind support, or financial assistance so that those needing assistance and those willing to provide assistance can identify each other and work together.</p>
10.2.1	<p><b>2. Language diversity</b> Key documents produced by ICANN must be available in all UN languages within a reasonable period in advance of the launch of the gTLD round.</p>	<b>1A</b>	<p>Some documents are already available in the 6 UN languages. The Final Application Guidebook will be also in due course, and the web site will be organize to find easily all the documents available in each language. The Board notes GAC’s recommendation to extend the communications beyond the 6 UN languages and is taking into account the additional language needs in its communications strategy.</p>
10.2.2	<p>The GAC strongly recommends that the communications strategy for the new gTLD round be developed with this issue of inclusiveness as a key priority.</p>	<b>1A</b>	<p>The Board agrees with the GAC and staff is committed to a global communications approach. The goal of that approach is ensure that any person that would take steps to take advantage of or mitigate cost due to the new gTLD program, is aware of the program.</p>
10.3	<p><b>3. Technical and logistics support</b></p>	<b>1B</b>	<p>ICANN has agreed to provide certain mechanisms for technical and logistical support, such as assisting with matching needs to providers. ICANN is also considering setting up regional help desks to provide more responsive and relevant technical support to new gTLD applicants in developing countries.</p> <p>The Board agrees with the GAC and has directed staff to produce a webpage where entities willing to assist applicants and applicants seeking assistance can find each other. The webpage is expected by end of June.</p> <p>Other targets include outreach and education to encourage participation across all regions.</p>

## Revised ICANN Notes on: the GAC New gTLDs Scorecard, and GAC Comments to Board Response

Item #	GAC Scorecard Actionable Item	Position	Notes
10.4	<b>4. Outreach – as per Joint AC/SO recommendations</b>	<b>1A</b>	
10.5	<b>5. Joint AC/SO Working Group on support for new gTLD applicants.</b> GAC urged ICANN to adopt recommendations of the Joint AC/SO Working Group.	<b>TBD</b>	This item from the GAC Scorecard appears to reflect the interim report (Milestone Report) of the JAS WG published 11 Nov 2010 <a href="http://www.icann.org/en/announcements/announcement-11nov10-en.htm">http://www.icann.org/en/announcements/announcement-11nov10-en.htm</a> . ICANN is awaiting their final report that is targeted to be published by end of May.
10.6	<b>6. Applications from Governments or National authorities (especially municipal councils and provincial authorities) – special consideration for applications from developing countries</b> The GAC commented that the new gTLD process should meet the global public interest consistent with the Affirmation of Commitments. It therefore urged ICANN to set technical and other requirements, including cost considerations, at a reasonable and proportionate level in order not to exclude developing country stakeholders from participating in the new gTLD-process. Key documents should be available in all UN languages. The GAC urges that the communications and outreach strategy for the new gTLD round be developed with this issue of inclusiveness as a key priority.  ii. Nairobi Communiqué	<b>TBD</b>	This set of issues overlaps with and is addressed in the other items in this section. The JAS WG interim report (Milestone Report) has addressed the fees. The Board is looking forward to receiving the Final Report with a more detailed proposal.  The Board notes the GAC is recommending a different cost structure given to Governments and National Authorities from developing and least developed countries. This recommendation has been passed to the JAS WG and the Board is looking forward to receiving the Final Report. The Board notes that, given the cost recovery policy, sources of funds must be identified.

**Revised ICANN Notes on: the GAC New gTLDs Scorecard, and GAC Comments to Board Response**

Item #	GAC Scorecard Actionable Item	Position	Notes
	<p>The GAC believed that instead of the then proposal of single-fee requirement, a cost-based structure of fees appropriate to each category of TLD would:</p> <ul style="list-style-type: none"> <li>a) prevent cross subsidization and</li> <li>b) better reflect the project scale,</li> </ul> <p>This would improve logistical requirements and financial position of local community and developing country stakeholders who should not be disenfranchised from the new TLD round.</p> <p>Further the board believes that :</p> <ul style="list-style-type: none"> <li>a. New gTLD process is developed on a cost recovery model.</li> <li>b. Experience gained from first round will inform decisions on fee levels, and the scope for discounts and subsidies in subsequent rounds.</li> <li>c. Non-financial means of support are being made available to deserving cases.</li> <li>i. Proposed that the following be entertained to achieve cost reduction:               <ul style="list-style-type: none"> <li>• Waiving the cost of Program Development (\$26k).</li> <li>• Waiving the Risk/Contingency cost (\$60k).</li> <li>• Lowering the application cost (\$100k)</li> <li>• Waiving the Registry fixed fees (\$25k per calendar year), and charge the Registry- Level</li> </ul> </li> </ul>		

**Revised ICANN Notes on: the GAC New gTLDs Scorecard, and GAC Comments to Board Response**

Item #	GAC Scorecard Actionable Item	Position	Notes
	<p>Transaction Fee only (\$0.25 per domain name registration or renewal).</p> <p>ii. Proposed that the reduced cost be paid incrementally, which will give the applicants/communities from developing countries more time to raise money, and investors will be more encouraged to fund an application that passes the initial evaluation.</p> <p>iii. Believe that communities from developing countries apply for new gTLDs according to an appropriate business model taking into consideration the realities of their regions. ICANN’s commitment towards supporting gTLD applicants in communities from developing countries will be a milestone to the development of the overall Internet community in Africa and other developing regions.</p>		
10.7	<p><b>A. Other Developing world Community comments</b></p> <p>Rolling out new gTLD and IDNs was done in a hurry and without basis on a careful feasibility study on the impact that this rollout will have on developing countries. For some representatives, this is a massive roll out of gTLDs and IDNs that will find many developing countries unprepared and unable to absorb it. There is the fear that</p>	<b>1B</b>	<p>ICANN is investigating and intends to provide mechanisms for assisting with matching needs to providers, and will continue to investigate mechanisms for providing additional forms of support (such as providing documents in additional languages beyond the official U.N. languages).</p> <p>As described above, the Board has directed staff to produce a webpage where entities willing to assist applicants and applicants seeking assistance can find each other. The webpage is expected by end of June.</p>

## Revised ICANN Notes on: the GAC New gTLDs Scorecard, and GAC Comments to Board Response

Item #	GAC Scorecard Actionable Item	Position	Notes
	there might be serious consequence in terms of economic impact to developing countries.		
<b>11.</b>	<b>Law enforcement due diligence recommendations [to amend the Registrar Accreditation Agreement as noted in the Brussels Communiqué]</b> (Note: ICANN will provide an update on the status of the RAA-related recommendations from law enforcement)		
11.1	Include other criminal convictions as criteria for disqualification, such as Internet-related crimes (felony or misdemeanor) or drugs.	<b>1A</b>	<p>In its letter dated 12 April 2011 the GAC is confirming responses held in the Brussels and San Francisco meetings to add a broad number of convictions to the background screening process. The inclusion of certain crimes without a standard definition across international, and in some cases, national jurisdictions remains a concern, for the following reasons:</p> <ul style="list-style-type: none"> <li>• It will lead to a background screening process that will not be consistent and fair for all applicants and</li> <li>• It puts ICANN in a position of trying to implement a set of standards that are not agreed to among various nations, including members of the GAC</li> </ul> <p>However, ICANN has continued to investigate this concern and has, with the help of subject matter experts, agreed to expand the scope of the background screening to cover some of the concerns raised by the GAC. Accordingly, the following will now be included in the background screening process:</p> <ul style="list-style-type: none"> <li>• Has ever been convicted of the illegal sale, manufacture, or distribution of pharmaceutical drugs, or been convicted or successfully extradited for any offense described in Article 3 of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988[1];</li> <li>• Has ever been convicted or successfully extradited for any offense</li> </ul>

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Item #	GAC Scorecard Actionable Item	Position	Notes
			<p>described in the United Nations Convention against Transnational Organized Crime (all Protocols)[2]; and</p> <ul style="list-style-type: none"> <li>• Has ever been convicted of any crime involving the use of computers, telephony systems, telecommunications, or the Internet to facilitate the commission of crimes.</li> </ul> <p>[1] <a href="http://www.unodc.org/unodc/en/treaties/illicit-trafficking.html">http://www.unodc.org/unodc/en/treaties/illicit-trafficking.html</a>            [2] <a href="http://www.unodc.org/unodc/en/treaties/CTOC/index.html">http://www.unodc.org/unodc/en/treaties/CTOC/index.html</a></p> <p>It is recognized that not all countries have signed on to the UN conventions reference above. These conventions are solely being used for identifying a list of crimes for which background checks will be performed. It is not intended that an applicant have been convicted pursuant to the UN convention but merely convicted of a crime listed under these conventions.</p> <p>Other crimes suggested by the GAC have not been included due to the lack of any consistent internationally accepted definitions for such crimes or based on significant public comment against such an inclusion (i.e., terrorism) when last placed in the Guidebook.</p>
11.2.1	Assign higher weight to applicants offering the highest levels of security to minimize the potential for malicious activity, particularly for those strings that present a higher risk of serving as venues for criminal, fraudulent or illegal conduct (e.g. such as those related to children, health-care, financial services, etc.)	<b>1B</b>	<p>In its letter dated 12 April 2011, the GAC has reiterated its request to provide a greater weight to those applicants who offer more security. The GAC also requests that ICANN publicly disclose whether the applicant has offered augmented security levels. ICANN has carefully considered this advice and has amended the following in the AGB:</p> <ul style="list-style-type: none"> <li>• Security –the application questionnaire has been amended to reflect two sections for Security;               <ol style="list-style-type: none"> <li>1. A section, open to comment, that describes the:                   <ol style="list-style-type: none"> <li>a. Augmented security levels or capabilities commensurate with the nature of the applied-for string including the</li> </ol> </li> </ol> </li> </ul>

**Revised ICANN Notes on: the GAC New gTLDs Scorecard, and GAC Comments to Board Response**

Item #	GAC Scorecard Actionable Item	Position	Notes
			<p>identification of international or industry-relevant standards and</p> <p>b. The commitments made to registrants concerning security levels.</p> <p>2. A section that will continue to remain confidential which requires that applicants provide the security policy that aligns with the first section of this question.</p> <ul style="list-style-type: none"> <li>• Abuse Prevention and Mitigation – the application questionnaire has been amended to provide an extra point to applicants where they include measures that promote Whois accuracy and include:               <ol style="list-style-type: none"> <li>1. A description of policies and procedures that define malicious or abusive behavior, capture metrics, and establish Service Level Agreements for resolution or</li> <li>2. Adequate controls to ensure proper access to domain functions.</li> </ol> </li> </ul> <p>The additional information being provided by the applicant in these questions in conjunction with application comments received from the Internet community will enable careful consideration by the evaluation panels of the measures to be implemented by applicants.</p> <p>It should be noted that results from the evaluation process will be in the form of “Pass” or “Fail” for each application. The scoring methodology requires that an application receive at least a minimum passing score for each question as well as an “exceeds” score for at least two questions to pass the technical/operational evaluation. Therefore, the scoring methodology (while not assigning a “higher weight” to applicants offering the highest levels of security), does create a limited incentive to meet the higher standard.</p>
11.3	Add domestic screening services, local to	<b>1A</b>	In its letter dated 12 April 2011, the GAC has requested more

## Revised ICANN Notes on: the GAC New gTLDs Scorecard, and GAC Comments to Board Response

Item #	GAC Scorecard Actionable Item	Position	Notes
	the applicant, to the international screening services.		<p>information on the type of background screening services to be used by ICANN and has indicated services used by other organizations such as ARIN which uses sources that essentially conducts searches of publically available data such as KnowX, Dun &amp; Bradstreet, Westlaw, and relevant federal and state websites for corporate and financial information.</p> <p>It has always been ICANN’s intent to use a background screening service that conducts searches of publically available data such as those used by the services mentioned in the GAC example.</p> <p>ICANN is in the process of drafting a Request for Proposal (RFP) from International Background Screening providers to provide such a service. The RFP, currently being circulated to a select number of law enforcement and security professionals for input, will be posted in the next few weeks.</p> <p>The RFP calls for providers to, at a minimum, have significant experience conducting international record checks of criminal and civil courts, law enforcement agencies and regulatory authorities in all countries where such records are available; have significant experience performing and possess a thorough knowledge of global, regional, and country specific background screening processes; provide background screening services in an expedited, orderly, consistent, and cost effective manner; and can efficiently scale to meet the demands of an unknown number of applications.</p>
11.4	Add criminal background checks to the Initial Evaluation	<b>1A</b>	See response to 11.1.
11.5	Amend the statement that the results of due diligence efforts will not be posted to a positive commitment to make such results	<b>1A</b>	In its letter dated 12 April 2011 the GAC requests that at a minimum, the identification of the individuals named in the application, e.g., officers, controlling shareholders, should be released for comment.

## Revised ICANN Notes on: the GAC New gTLDs Scorecard, and GAC Comments to Board Response

Item #	GAC Scorecard Actionable Item	Position	Notes
	publicly available		<p>ICANN agrees with this recommendation and will make available the names and titles of the key officers, directors, partners and controlling shareholders for comment.</p> <p>The GAC also reiterates its endorsement of Law Enforcement Agency recommendations for due diligence and amendments to the Registrar Accreditation Agreement and requests that the Board provide in writing its indication of how it intends to implement these recommendations prior to the Singapore meeting. ICANN and the Board appreciate this reminder, however, this is beyond the scope of this scorecard and will be separately addressed by the Board in due course.</p>
11.6	Maintain requirements that WHOIS data be accurate and publicly available.	<b>1A</b>	From the Affirmation of Commitments: "ICANN additionally commits to enforcing its existing policy relating to WHOIS, subject to applicable laws. Such existing policy requires that ICANN implement measures to maintain timely, unrestricted and public access to accurate and complete WHOIS information, including registrant, technical, billing, and administrative contact information."
<b>12.</b>	<b>The need for an early warning to applicants whether a proposed string would be considered controversial or to raise sensitivities (including geographical names)</b>		
12.1	Reconsider its objection to an "early warning" opportunity for governments to review potential new gTLD strings and to advise applicants whether their proposed strings would be considered controversial or to raise national sensitivities.	<b>1B</b>	Please see the Board's notes above with respect to the GAC's advice on "Procedures for the review of sensitive strings."

**Revised ICANN Notes on: the GAC New gTLDs Scorecard, and GAC Comments to Board Response**

The score as estimated by ICANN (without GAC agreement or consultation):

	1A	1B	2	TBD
Post Brussels Consultation	25	28	23	4
Post Silicon Valley Consultation	42	18	17	3

R-9

RESPONDENT'S EXHIBIT

# gTLD Applicant Guidebook

April 2011 Discussion Draft

Please note that this is a discussion draft only. Potential applicants should not rely on any of the proposed details of the new gTLD program as the program remains subject to further consultation and revision.



15 April 2011



15 April 2011

Dear Prospective Applicant,

ICANN works toward the common good of providing a stable and secure global Internet. In performing its core functions of supplying oversight for the Internet's unique identifier systems, ICANN also promotes competition and consumer choice.

When ICANN was created in 1998, the generic top-level (gTLD) domain space was limited to eight generic Top-Level Domains. After rounds to introduce a limited number of gTLDs in 2000 and 2004, the generic domain name space had only expanded to 22 gTLDs.

The launch of the New gTLD Program will create more choice for Internet users, empower innovation, stimulate economic activity, and generate new business opportunities around the world.

This April 2011 Discussion Draft of the Applicant Guidebook highlights the resolutions of the Board dialogues with the Governmental Advisory Committee (GAC) concerning the outstanding New gTLD implementation issues. This unprecedented consultative process between the Board and governments via the GAC has been a positive improvement to the multi-stakeholder model.

This version of the Applicant Guidebook is the latest in a series of updates which incorporates not only public comments received to date but also takes into account additional feedback received from the recent Board/GAC consultations.

We look forward to an additional round of public comments followed by a meeting in Singapore where the Board will review the New gTLD Program progress and the Applicant Guidebook.

Respectfully,

Rod Beckstrom  
President and CEO

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# Preamble

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## *New gTLD Program Background*

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

Currently the namespace consists of 21 gTLDs and over 250 ccTLDs operating on various models. Each of the gTLDs has a designated "registry operator" and, in most cases, a Registry Agreement between the operator (or sponsor) and ICANN. The registry operator is responsible for the technical operation of the TLD, including all of the names registered in that TLD. The gTLDs are served by over 900 registrars, who interact with registrants to perform domain name registration and other related services. The new gTLD program will create a means for prospective registry operators to apply for new gTLDs, and create new options for consumers in the market. When the program launches its first application round, ICANN expects a diverse set of applications for new gTLDs, including IDNs, creating significant potential for new uses and benefit to Internet users across the globe.

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

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

This draft of the Applicant Guidebook is available for public comment to enable completion of the implementation work on the program.

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



# Applicant Guidebook

## April 2011 Discussion Draft Module 1

Please note that this is a discussion draft only. Potential applicants should not rely on any of the proposed details of the new gTLD program as the program remains subject to further consultation and revision.

15 April 2011

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# Module 1

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## *Introduction to the gTLD Application Process*

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

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

A glossary of relevant terms is included at the end of this Applicant Guidebook.

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

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

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

### *1.1 Application Life Cycle and Timelines*

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

#### *1.1.1 Application Submission Dates*

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The application submission period opens at [time] UTC [date].

The User Registration period closes at ([time] UTC [date])

The application submission period closes at [time] UTC [date].

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

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

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

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

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

### 1.1.2 Application Processing Stages

This subsection provides an overview of the stages involved in processing an application submitted to ICANN. ~~In~~ Figure 1-1 provides a simplified depiction of the process. ~~The~~

shortest and most straightforward path is marked with bold lines, while certain stages that may or may not be applicable in any given case are also shown. A brief description of each stage follows.

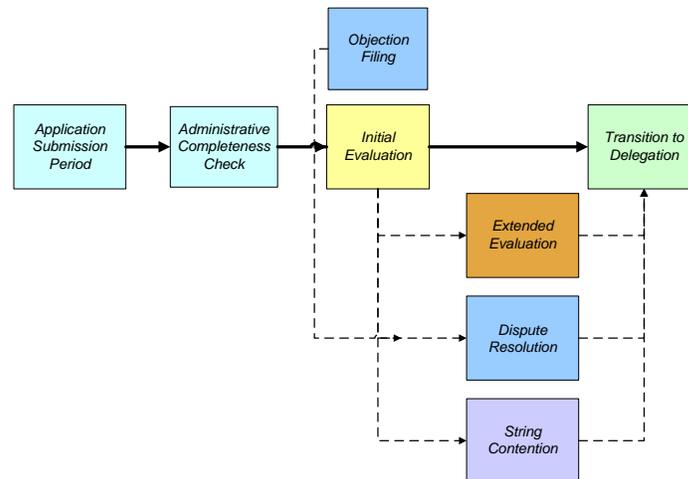


Figure 1-1 – Once submitted to ICANN, applications will pass through multiple stages of processing.

### 1.1.2.1 Application Submission Period

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

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

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

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

The application submission period is expected to last for 60 days. Following the close of the application submission period, ICANN will provide applicants with periodic status updates on the progress of their applications.

### *1.1.2.2 Administrative Completeness Check*

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

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

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

The administrative completeness check is expected to be completed for all applications in a period of approximately 48 weeks, subject to extension depending on volume. In the event that all applications cannot be processed within ~~this 4-week~~ period, ICANN will post updated process information and an estimated timeline.

### *1.1.2.35 Public Comment Period*

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

ICANN will open a public comment period at the time applications are publicly posted on ICANN's website (refer to subsection 1.1.2.2) ~~which will remain open for 45 calendar days~~. This period will allow time for the

community to review and submit comments on posted application materials (referred to as "application comments."), ~~and will allow for subsequent consolidation of the received comments, distribution to the panels performing reviews, and analysis and consideration of the comments by the evaluators within the 5-month timeframe allotted for Initial Evaluation.~~ The comment forum will require commenters to associate comments with specific applications and the relevant panel. Comments received within a 60-day period from the posting of the application materials will be available to the evaluation panels performing the Initial Evaluation reviews. This ~~public comment~~ period is subject to extension, should the volume of applications or other circumstances require. **To be considered by evaluators, comments must be received in the designated **public** comment forum within the stated time period.**

~~Comments received during the public comment period will be tagged to a specific application.~~ Evaluators will perform due diligence on the application comments (i.e., determine their relevance to the evaluation, verify the accuracy of claims, analyze meaningfulness of references cited) and take the information provided in these comments into consideration. In cases where consideration of the comments has impacted the scoring of the application, the evaluators will seek clarification from the applicant. Consideration of the applicability of the information submitted through public comments will be included in the evaluators' reports. Application comments that have impacted the application scoring will be reflected in the evaluators' summary reports, which will be published at the end of Extended Evaluation.

Comments received after the 60-day period will be stored and available for other considerations, such as the dispute resolution process.

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

**Comments and the Objection Process:** A distinction should be made between ~~public~~application comments, which may be relevant to ICANN's task of determining whether applications meet the established criteria, and formal objections that concern matters outside those evaluation criteria. The formal objection process was created to allow

a full and fair consideration of objections based on certain limited grounds outside ICANN's evaluation of applications on their merits.

Public comments will not be considered as potential formal objections. Public comments on matters associated with formal objections will not be considered by panels during Initial Evaluation; however, the Evaluation. These comments will be available to and may be subsequently considered by an expert panel during a dispute resolution proceeding (see subsection 1.1.2.79). However, in general, application comments have a very limited role in the dispute resolution process.

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

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

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

As noted above, applicants are encouraged to identify potential sensitivities in advance and work with the relevant parties, including governments, to mitigate concerns related to the application.

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

#### **1.1.2.4 GAC Early Warning**

Concurrent with the 60-day comment period, ICANN's Governmental Advisory Committee (GAC) may issue a GAC Early Warning notice concerning an application. This

provides the applicant with an indication that the application is seen as potentially problematic by one or more governments.

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

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

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

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

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

### **1.1.2.53** *Initial Evaluation*

Initial Evaluation will begin immediately after the administrative completeness check concludes. All complete applications will be reviewed during Initial

Evaluation. At the beginning of this period, background screening on the applying entity and the individuals named in the application will be conducted. Applications must pass this step before the Initial Evaluation reviews are carried out.

There are two main elements of the Initial Evaluation:

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

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

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

A process external to the application submission process will be employed to establish evaluation priority. This process will be based on an online ticketing system or other objective criteria.

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

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

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

### **1.1.2.64** *Objection Filing*

Formal objections to applications can be filed on any of four enumerated grounds, by parties with standing to object. The objection filing period will open after ICANN posts the list of complete applications as described in subsection 1.1.2.2, and will last for approximately ~~75~~<sup>75½</sup> months.

Objectors must file such formal objections directly with dispute resolution service providers (DRSPs), not with ICANN. The objection filing period will close following the end of the Initial Evaluation period (refer to subsection 1.1.2.53), with a two-week window of time between the posting of the Initial Evaluation results and the close of the objection filing period. Objections that have been filed during the objection filing period will be addressed in the dispute resolution stage, which is outlined in subsection 1.1.2.97 and discussed in detail in Module 3.

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

Applicants are encouraged to identify possible regional, cultural, property interests, or other sensitivities regarding TLD strings and their uses before applying and, where possible, consult with interested parties to mitigate any concerns in advance.

### **1.1.2.7** *Receipt of GAC Advice on New gTLDs*

The GAC may provide public policy advice directly to the ICANN Board on any application. The "GAC Advice" procedure described in Module 3 indicates that, to be considered by the Board during the evaluation process,

<sup>1</sup> See "Delegation Rate Scenarios for New gTLDs" at <http://icann.org/en/topics/new-gtlds/delegation-rate-scenarios-new-gtlds-06oct10-en.pdf> for additional discussion.

the GAC Advice on New gTLDs must be submitted by the close of the Objection Filing Period.

Receipt of a GAC Early Warning is not a prerequisite to use of the GAC Advice process.

GAC Advice on New gTLDs that includes a consensus statement from the GAC that an application should not proceed as submitted, and that includes a thorough explanation of the public policy basis for such advice, will create a strong presumption for the Board that the application should not be approved.

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

### **1.1.2.86**      *Extended Evaluation*

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

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

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

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

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

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

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

### 1.1.2.97 *Dispute Resolution*

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

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

PublicApplication comments may also be relevant to one or more objection grounds. (Refer to Module 3, Dispute Resolution Procedures, for the objection grounds.) The DRSPs will have access to all applicationpublic comments received, and will have discretion to consider them.

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

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

### 1.1.2.108 *String Contention*

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

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

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

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

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

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

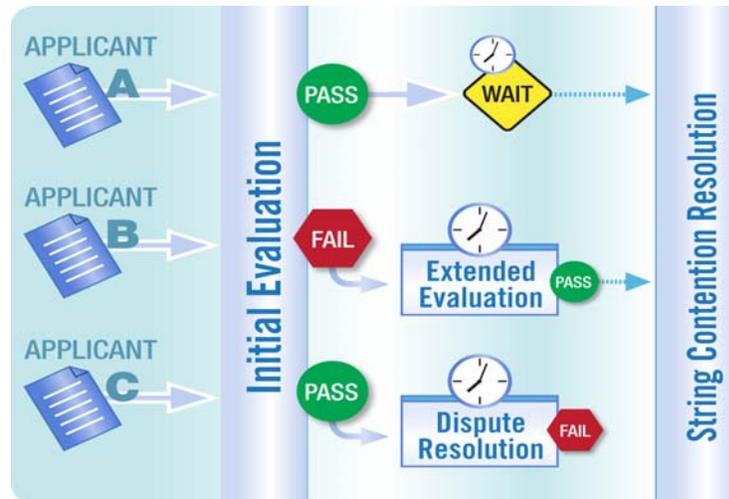


Figure 1-2 – All applications in a contention set must complete all previous evaluation and dispute resolution stages before string contention resolution can begin.

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

In the event of a community priority evaluation (see Module 4, String Contention Procedures), ICANN will provide the comments received during the public comment period to the evaluators with instructions to take the relevant information into account in reaching their conclusions.

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

### 1.1.2.119 Transition to Delegation

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

Following execution of a registry agreement, the prospective registry operator must complete technical set-up and show satisfactory performance on a set of technical tests before delegation of the gTLD into the root

zone may be initiated. If the pre-delegation testing requirements are not satisfied so that the gTLD can be delegated into the root zone within the time frame specified in the registry agreement, ICANN may in its sole and absolute discretion elect to terminate the registry agreement.

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

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

### 1.1.3 Lifecycle Timelines

Based on the estimates for each stage described in this section, the lifecycle for a straightforward application could be approximately ~~28~~ months, as follows:

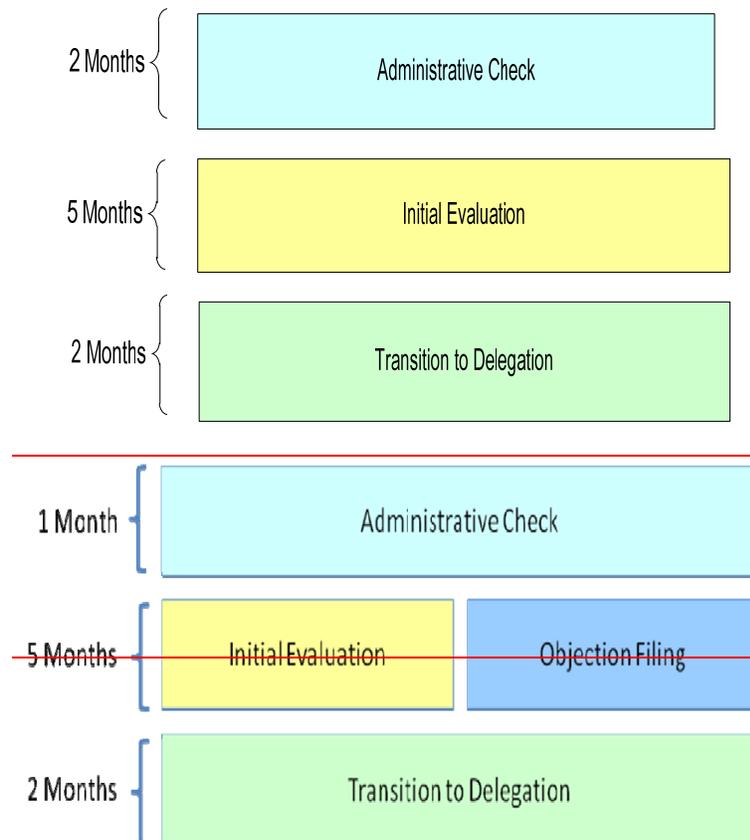


Figure 1-3 – A straightforward application could have an approximate 98-month lifecycle.

The lifecycle for a highly complex application could be much longer, such as 2019 months in the example below:

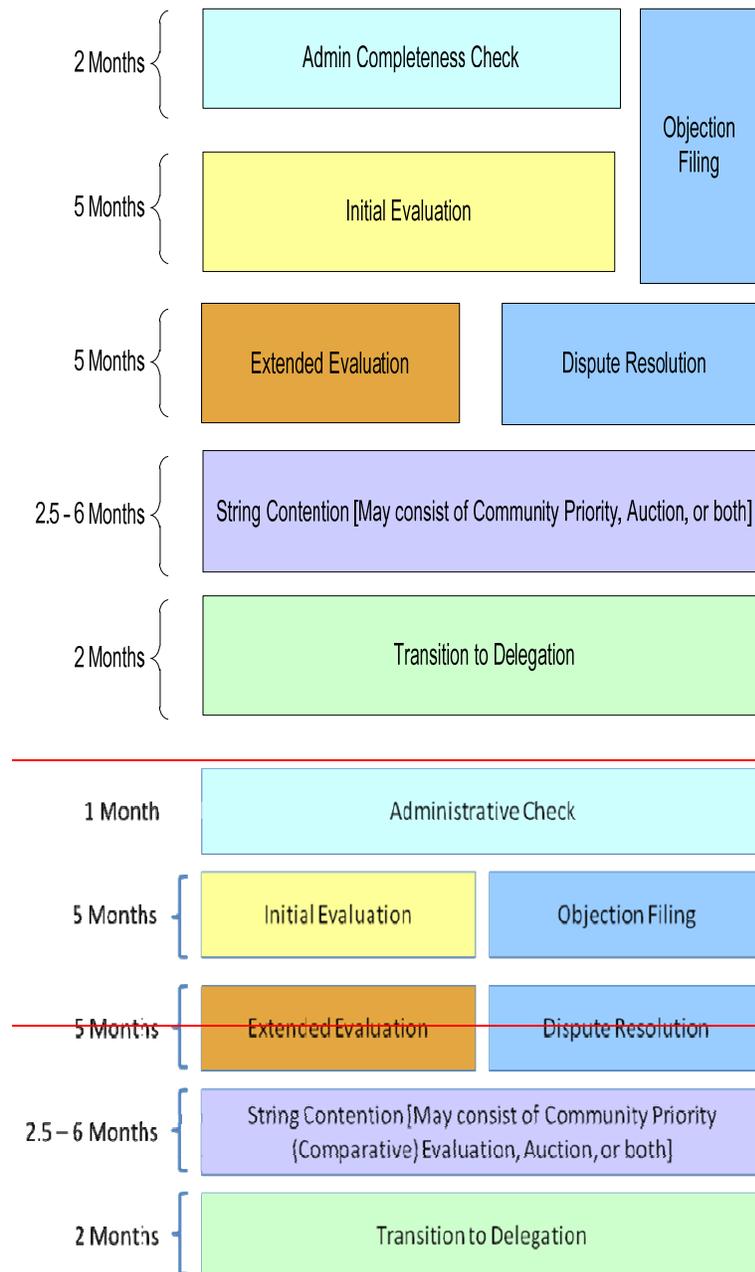


Figure 1-4 – A complex application could have an approximate 2019-month lifecycle.

### 1.1.4 Posting Periods

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

Period	Posting Content
<del>During</del> End of Administrative Completeness Check	Public portions of all applications <u>will be posted within 2 weeks of the start of that have passed</u> the Administrative Completeness Check.
End of Administrative Completeness Check	<u>Results of Administrative Completeness Check.</u>
GAC Early Warning Period	<u>GAC Early Warnings received.</u>
During Initial Evaluation	Status updates for applications withdrawn or ineligible for further review. Contention sets resulting from String Similarity review.
End of Initial Evaluation	Application status updates with all Initial Evaluation results.
GAC Advice on New gTLDs	<u>GAC Advice received.</u>
End of Extended Evaluation	Application status updates with all Extended Evaluation results. Evaluation summary reports from the Initial and Extended Evaluation periods.
During Objection Filing/Dispute Resolution	Information on filed objections and status updates available via Dispute Resolution Service Provider websites. Notice of all objections posted by ICANN after close of Objection Filing period.
During Contention Resolution (Community Priority Evaluation)	Results of each Community Priority Evaluation posted as completed.
During Contention Resolution (Auction)	Results from each auction posted as completed.
Transition to Delegation	Registry Agreements posted when executed. Pre-delegation testing status updated.

### 1.1.5 Sample Application Scenarios

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

Estimated time frames for each scenario are also included, based on current knowledge. Actual time frames may vary depending on several factors, including the total number of applications received by ICANN during the application submission period. It should be emphasized that most applications are expected to pass through the process in the shortest period of time, i.e., they will not go through extended evaluation, dispute resolution, or string contention resolution processes. Although most of the scenarios below are for processes extending beyond ~~nine~~~~eight~~ months, it is expected that most applications will complete the process within the ~~nine~~~~eight~~-month timeframe.

Scenario Number	Initial Evaluation	Extended Evaluation	Objection(s) Filed	String Contention	Approved for Delegation Steps	Estimated Elapsed Time
1	Pass	N/A	None	No	Yes	<del>98</del> months
2	Fail	Pass	None	No	Yes	<del>143</del> months
3	Pass	N/A	None	Yes	Yes	<del>119.5 – 154</del> months
4	Pass	N/A	Applicant prevails	No	Yes	<del>143</del> months
5	Pass	N/A	Objector prevails	N/A	No	<del>124</del> months
6	Fail	Quit	N/A	N/A	No	<del>76</del> months
7	Fail	Fail	N/A	N/A	No	<del>124</del> months
8	Fail	Pass	Applicant prevails	Yes	Yes	<del>165.5 – 2049</del> months
9	Fail	Pass	Applicant prevails	Yes	No	<del>143.5 – 187</del> months

**Scenario 1 – Pass Initial Evaluation, No Objection, No**

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

**Scenario 2 – Extended Evaluation, No Objection, No Contention** – In this case, the application fails one or more aspects of the Initial Evaluation. The applicant is eligible for and requests an Extended Evaluation for the appropriate elements. Here, the application passes the Extended Evaluation. As with Scenario 1, no objections are filed during the objection period, so there is no dispute to resolve. As there is no contention for the gTLD string, the applicant can enter into a registry agreement and the application can proceed toward delegation of the applied-for gTLD.

**Scenario 3 – Pass Initial Evaluation, No Objection, Contention** – In this case, the application passes the Initial Evaluation so there is no need for Extended Evaluation. No objections are filed during the objection period, so there is no dispute to resolve. However, there are other applications for the same or a similar gTLD string, so there is contention. In this case, the application prevails in the contention resolution, so the applicant can enter into a registry agreement and the application can proceed toward delegation of the applied-for gTLD.

**Scenario 4 – Pass Initial Evaluation, Win Objection, No Contention** – In this case, the application passes the Initial Evaluation so there is no need for Extended Evaluation. During the objection filing period, an objection is filed on one of the four enumerated grounds by an objector with standing (refer to Module 3, Dispute Resolution Procedures). The objection is heard by a dispute resolution service provider panel that finds in favor of the applicant. The applicant can enter into a registry agreement and the application can proceed toward delegation of the applied-for gTLD.

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

**Scenario 6 – Fail Initial Evaluation, Applicant Withdraws** – In this case, the application fails one or more aspects of the Initial Evaluation. The applicant decides to withdraw the

application rather than continuing with Extended Evaluation. The application does not proceed.

***Scenario 7 – Fail Initial Evaluation, Fail Extended Evaluation***

-- In this case, the application fails one or more aspects of the Initial Evaluation. The applicant requests Extended Evaluation for the appropriate elements. However, the application fails Extended Evaluation also. The application does not proceed.

***Scenario 8 – Extended Evaluation, Win Objection, Pass***

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

***Scenario 9 – Extended Evaluation, Objection, Fail***

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

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

### 1.1.6 Subsequent Application Rounds

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

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

## 1.2 Information for All Applicants

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### 1.2.1 Eligibility

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

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

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

Background screening at both the entity level and the individual level will be conducted for all applications to confirm eligibility. This inquiry is conducted on the basis of the information provided in questions 1-11 of the application form. ICANN may take into account

information received from any source if it is relevant to the criteria in this section.

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

Background screening is in place to protect the public interest in the allocation of critical Internet resources, and ICANN reserves the right to deny an otherwise qualified application, or to contact the applicant with additional questions, based on the information obtained in the background screening process.

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

~~Circumstances where ICANN may deny an otherwise qualified application include, but are not limited to instances where the applicant, or any individual named in the application:~~

- a. within the past ten years, has been convicted of any crime~~a felony, or of a misdemeanor~~ related to financial or corporate governance activities, or has been judged by a court to have committed fraud or breach of fiduciary duty, or has been the subject of a judicial determination that ICANN deemed as the substantive equivalent of any of these;
- b. within the past ten years, has been disciplined by any government or industry regulatory body for conduct involving dishonesty or misuse of the funds of others;
- c. within the past ten years has been convicted of any willful tax-related fraud or willful evasion of tax liabilities;
- d. within the past ten years has been convicted of perjury, forswearing, failing to cooperate with a law enforcement investigation, or making false statements to

a law enforcement agency or representative;

d.e. \_\_\_\_\_ has ever been convicted of any crime involving the use of computers, telephony systems, telecommunications or the internet to facilitate the commission of crimes;

e.f. \_\_\_\_\_ has ever been convicted of any crime involving the use of a weapon, force, or the threat of force;

g. \_\_\_\_\_ has ever been convicted of any violent or sexual offense victimizing children, the elderly, or individuals with disabilities;

h. \_\_\_\_\_ has ever been convicted of the illegal sale, manufacture, or distribution of pharmaceutical drugs, or been convicted or successfully extradited for any offense described in Article 3 of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988<sup>2</sup>;

f.i. \_\_\_\_\_ has ever been convicted or successfully extradited for any offense described in the United Nations Convention against Transnational Organized Crime (all Protocols)<sup>3,4</sup>;

g.i. \_\_\_\_\_ has been convicted of aiding, abetting, facilitating, enabling, conspiring to commit, or failing to report any of the listed crimes within the respective timeframes specified above;

k. \_\_\_\_\_ has entered a guilty plea as part of a plea agreement or has a court case in any jurisdiction with a disposition of Adjudicated Guilty or Adjudication Withheld (or regional equivalents) for any of the listed crimes within the respective timeframes listed above;

<sup>2</sup> <http://www.unodc.org/unodc/en/treaties/illicit-traffic.html>

<sup>3</sup> <http://www.unodc.org/unodc/en/treaties/CTOC/index.html>

<sup>4</sup> It is recognized that not all countries have signed on to the UN conventions referenced above. These conventions are being used solely for identification of a list of crimes for which background screening will be performed. It is not necessarily required that an applicant would have been convicted pursuant to the UN convention but merely convicted of a crime listed under these conventions, to trigger these criteria.

h.l. is the subject of a disqualification imposed by ICANN and in effect at the time the application is considered;

i.m. has been involved in of a pattern of adverse, final decisions indicating that the applicant or individual named in the application was engaged in cybersquatting as defined in the UDRP, ACPA, or other equivalent legislation, or was engaged in reverse domain name hijacking under the UDRP or bad faith or reckless disregard under the ACPA or other equivalent legislation. Three or more such decisions with one occurring in the last four years will generally be considered to constitute a pattern.

j.n. fails to provide ICANN with the identifying information necessary to confirm identity at the time of application or to resolve questions of identity during the background screening process;

k.o. fails to provide a good faith effort to disclose all relevant information relating to items (a) – (mk).

All applicants are required to provide complete and detailed explanations regarding any of the above events as part of the application. Crimes of a personal nature that do not meet any of the criteria listed in (a) – (ok) will not be considered for the purpose of criminal background screening and do not need to be disclosed. Background screening information will not be made publicly available by ICANN.

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

**Legal Compliance** -- ICANN must comply with all U.S. laws, rules, and regulations. One such set of regulations is the economic and trade sanctions program administered by the Office of Foreign Assets Control ("OFAC") of the U.S. Department of the Treasury. These sanctions have been imposed on certain countries, as well as individuals and

entities that appear on OFAC's List of Specially Designated Nationals and Blocked Persons (the "SDN List"). ICANN is prohibited from providing most goods or services to residents of sanctioned countries or their governmental entities or to SDNs without an applicable U.S. government authorization or exemption. ICANN generally will not seek a license to provide goods or services to an individual or entity on the SDN List. In the past, when ICANN has been requested to provide services to individuals or entities that are not SDNs, but are residents of sanctioned countries, ICANN has sought and been granted licenses as required. In any given case, however, OFAC could decide not to issue a requested license.

### *1.2.2 Required Documents*

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

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

Supporting documentation should be submitted in the original language. English translations are not required.

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

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

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

At least one such endorsement is required for a complete application. The form and content of the

endorsement are at the discretion of the party providing the endorsement; however, the letter must include an express statement of support for the application as submitted and the contact information of the entity providing the endorsement.

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

~~1.2.~~ **Government support or non-objection** – If an applicant has applied for a gTLD string that is a geographic name, the applicant is required to submit ~~documentation~~ documentation ~~statement~~ of support for or non-objection to its application from the relevant governments or public authorities. Refer to subsection 2.2.1.4 for more information on the requirements for geographic names. If applicable, this will be submitted in the geographic names section of the application.

~~2.3.~~ **Documentation of third-party funding commitments** – If an applicant lists funding from third parties in its application, it must provide evidence of commitment by the party committing the funds. If applicable, this will be submitted in the financial section of the application.

### 1.2.3 Community-Based Designation

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

#### 1.2.3.1 Definitions

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

1. Demonstrate an ongoing relationship with a clearly delineated community.

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

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

### *1.2.3.2 Implications of Application Designation*

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

***Objection / Dispute Resolution*** – All applicants should understand that an objection may be filed against any application on community grounds, even if the applicant has not designated itself as community-based or declared the gTLD to be aimed at a particular community. Refer to Module 3, Dispute Resolution Procedures.

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

- A **settlement between the parties** can occur at any time after contention is identified. The parties will be encouraged to meet with an objective to settle the contention. Applicants in contention always have the opportunity to resolve the contention voluntarily, resulting in the withdrawal of one or

more applications, before reaching the contention resolution stage.

- A **community priority evaluation** will take place only if a community-based applicant in a contention set elects this option. All community-based applicants in a contention set will be offered this option in the event that there is contention remaining after the applications have successfully completed all previous evaluation stages.
- An **auction** will result for cases of contention not resolved by community priority evaluation or agreement between the parties. Auction occurs as a contention resolution means of last resort. If a community priority evaluation occurs but does not produce a clear winner, an auction will take place to resolve the contention.

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

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

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

### ***1.2.3.3 Changes to Application Designation***

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

### *1.2.4 Notice concerning Technical Acceptance Issues with New gTLDs*

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

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

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

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

### *1.2.5 Notice concerning TLD Delegations*

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

### *1.2.6 Terms and Conditions*

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

### *1.2.7 Notice of Changes to Information*

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If at any time during the evaluation process information previously submitted by an applicant becomes untrue or

inaccurate, the applicant must promptly notify ICANN via submission of the appropriate forms. This includes applicant-specific information such as changes in financial position and changes in ownership or control of the applicant.

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

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

### *1.2.8 Voluntary Designation for High Security Zones*

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ICANN and its stakeholders are currently developing a special designation for "High Security Zone Top Level Domains" ("HSTLDs"). This work is currently focusing on developing a standard for possible adoption by an international standards body who can administer audits and certifications on an independent basis.

This voluntary designation is for top-level domains that demonstrate and uphold enhanced security-minded practices and policies. While any registry operator, including successful new gTLD applicants, will be eligible to participate in this program, its development and operation are beyond the scope of this guidebook. An applicant's election to pursue an HSTLD designation is entirely independent of the evaluation process and will require completion of an additional set of requirements.

For more information on the HSTLD program, including current program development material and activities, please refer to <http://www.icann.org/en/topics/new-gtlds/hstld-program-en.htm>.

### *1.2.9 Security and Stability*

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*Root Scaling:* There has been significant study, analysis, and consultation in preparation for launch of the New gTLD Program: indicating that the addition of gTLDs to the root zone will not negatively impact the security or stability of the DNS.

It is estimated that 200-300 TLDs will be delegated annually, and determined that in no case will more than 1000 new gTLDs be added to the root zone in a year. The delegation

rate analysis, consultations with the technical community, and anticipated normal operational upgrade cycles all lead to the conclusion that the new gTLD delegations will have no significant impact on the stability of the root system. Modeling will continue during, and after, the first application round so that root-scaling discussions can continue and the delegation rates can be managed as the program goes forward.

All applicants should be aware that delegation of any new gTLDs is conditional on the continued absence of significant negative impact on the security or stability of the DNS.

### *1.2.10 Resources for Applicant Assistance*

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A variety of support resources are available to gTLD applicants. More information will be available on ICANN's website at <http://www.icann.org/en/topics/new-gtld-program.htm>.<sup>5</sup>

## *1.3 Information for Internationalized Domain Name Applicants*

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

### *1.3.1 IDN-Specific Requirements*

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

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

An A-label is the ASCII form of an IDN label. Every IDN A-label begins with the IDNA ACE prefix, "xn--", followed by a string that is a valid output of the Punycode algorithm,

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<sup>5</sup> The Joint SO/AC New gTLD Applicant Support Working Group is currently developing recommendations for support resources that may be available to gTLD applicants. Information on these resources will be published on the ICANN website once identified.

making a maximum of 63 total ASCII characters in length. The prefix and string together must conform to all requirements for a label that can be stored in the DNS including conformance to the LDH (host name) rule described in RFC 1034, RFC 1123, and elsewhere.

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

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

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

1. Meaning or restatement of string in English. The applicant will provide a short description of what the string would mean or represent in English.
2. Language of label (ISO 639-1). The applicant will specify the language of the applied-for TLD string, both according to the ISO codes for the representation of names of languages and in English.
3. Script of label (ISO 15924). The applicant will specify the script of the applied-for gTLD string, both according to the ISO codes for the representation of names of scripts, and in English.
4. Unicode code points. The applicant will list all the code points contained in the U-label according to its Unicode form.
5. Applicants must further demonstrate that they have made reasonable efforts to ensure that the encoded IDN string does not cause any rendering or operational problems. For example, problems have been identified in strings with characters of mixed right-to-left and left-to-right directionality when numerals are adjacent to the path separator (i.e., the dot).<sup>6</sup>

If an applicant is applying for a string with known issues, it should document steps that will be taken to mitigate these issues in applications. While it is not possible to ensure that all rendering problems are avoided, it is important that as many as possible are identified early and that the potential registry operator is aware of

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<sup>6</sup> See examples at <http://stupid.domain.name/node/683>

these issues. Applicants can become familiar with these issues by understanding the IDNA protocol (see <http://www.icann.org/en/topics/idn/rfcs.htm>), and by active participation in the IDN wiki (see <http://idn.icann.org/>) where some rendering problems are demonstrated.

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

### 1.3.2 IDN Tables

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

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

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

Each applicant is responsible for developing its IDN Tables, including specification of any variant characters. Tables must comply with ICANN's IDN Guidelines<sup>7</sup> and any updates thereto, including:

- Complying with IDN technical standards.
- Employing an inclusion-based approach (i.e., code points not explicitly permitted by the registry are prohibited).
- Defining variant characters.

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<sup>7</sup> See <http://www.icann.org/en/topics/idn/idn-guidelines-26apr07.pdf>

- Excluding code points not permissible under the guidelines, e.g., line-drawing symbols, pictographic dingbats, structural punctuation marks.
- Developing tables and registration policies in collaboration with relevant stakeholders to address common issues.
- Depositing IDN tables with the IANA Repository for IDN Practices (once the TLD is delegated).

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

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

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

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

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

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

### 1.3.3 IDN Variant TLDs

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

Each application contains one applied-for gTLD string. The applicant may also declare any variant strings for the TLD in its application. However, no variant gTLD strings will be delegated through the New gTLD Program until variant management solutions are developed and implemented.<sup>8</sup>

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

The following scenarios are possible during the evaluation process:

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

Variant strings listed in successful gTLD applications will be tagged to the specific application and added to a "Declared Variants List" that will be available on ICANN's website. A list of pending (i.e., declared) variant strings from the IDN ccTLD Fast Track is available at

<http://icann.org/en/topics/idn/fast-track/string-evaluation-completion-en.htm>.

ICANN may independently determine which strings are variants of one another, and will not necessarily treat the applicant's list of purported variants as dispositive in the process.

- b. Multiple applicants apply for strings that are identified by ICANN as variants of one another.

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<sup>8</sup> The ICANN Board directed that work be pursued on variant management in its resolution on 25 Sep 2010, <http://www.icann.org/en/minutes/resolutions-25sep10-en.htm#2.5>.

These applications will be placed in a contention set and will follow the contention resolution procedures in Module 4.

- c. Applicant submits an application for a gTLD string and does not indicate variants to the applied-for gTLD string. ICANN will not identify variant strings unless scenario (b) above occurs.

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

Variant strings listed in the application will be reviewed for consistency with the IDN tables submitted in the application. Should any declared variant strings not be based on use of variant characters according to the submitted top-level tables, the applicant will be notified and the declared string will no longer be considered part of the application.

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

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

## *1.4 Submitting an Application*

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

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

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

### 1.4.1 Accessing the TLD Application System

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

#### 1.4.1.1 User Registration

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

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

12(a)	Deposit payment confirmation
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A subset of identifying information will be collected from the entity performing the user registration, in addition to the applicant information listed above. The registered user could be, for example, an agent, representative, or employee who would be completing the application on behalf of the applicant.

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

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

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

No new user registrations will be accepted after [date to be inserted in final version of Applicant Guidebook].

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

#### ***1.4.1.2 Application Form***

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

No.	Application and String Information
12(b)	Payment confirmation for remaining evaluation fee amount

13	Applied-for gTLD string
14	IDN string information, if applicable
15	IDN tables, if applicable
16	Mitigation of IDN operational or rendering problems, if applicable
17	Representation of string in International Phonetic Alphabet (Optional)
18	Mission/purpose of the TLD
19	Is the application for a community-based TLD?
20	If community based, describe elements of community and proposed policies
21	Is the application for a geographical name? If geographical, documents of support required
22	Measures for protection of geographical names at second level
23	Registry Services: name and full description of all registry services to be provided
No.	<b>Technical and Operational Questions (External)</b>
24	Shared registration system (SRS) performance
25	EPP
26	Whois
27	Registration life cycle
28	Abuse prevention & mitigation
29	Rights protection mechanisms
<u>30(a)</u>	<u>Security</u>
	<b>Technical and Operational Questions (Internal)</b>
<u>30(b)</u>	<u>Security</u> <del>Technical overview of proposed registry</del>
<u>31</u>	<u>Technical overview of proposed registry</u>
<u>32</u>	Architecture

332	Database capabilities
343	Geographic diversity
354	DNS service compliance
35	Security
36	IPv6 reachability
37	Data backup policies and procedures
38	Escrow
39	Registry continuity
40	Registry transition
41	Failover testing
42	Monitoring and fault escalation processes
43	DNSSEC
44	IDNs (Optional)
<b>No.</b>	<b>Financial Questions</b>
45	Financial statements
46	Projections template: costs and funding
47	Costs: setup and operating
48	Funding and revenue
49	Contingency planning: barriers, funds, volumes
50	Continuity: financial instrument

#### 1.4.2 Customer Support during the Application Process

TAS will also provide applicants with access to support mechanisms during the application process. A support link will be available in TAS where users can refer to reference

documentation (such as FAQs or user guides), or contact customer support.

When contacting customer support, users can expect to receive a tracking ticket number for a support request, and a response within [established service-level agreements](#) 48 hours. Support requests will be routed to the appropriate person, depending upon the nature of the request. For example, a technical support request would be directed to the personnel charged with resolving TAS technical issues, while a question concerning the nature of the required information or documentation would be directed to an appropriate contact. The response will be added to the reference documentation available for all applicants.

### ***1.4.3 Backup Application Process***

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

## ***1.5 Fees and Payments***

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

### ***1.5.1 gTLD Evaluation Fee***

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The gTLD evaluation fee is required from all applicants. This fee is in the amount of USD 185,000. The evaluation fee is payable in the form of a 5,000 deposit submitted at the time the user requests [an](#) application slots within TAS, and a payment of the remaining 180,000 submitted with the full application. ICANN will not begin its evaluation of an application unless it has received the full gTLD evaluation fee by [time] UTC [date].

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

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

evaluation fee also covers community priority evaluation fees in cases where the applicant achieves a passing score.

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

Refund Available to Applicant	Percentage of Evaluation Fee	Amount of Refund
<u>Within 21 days of a GAC Early Warning</u>	<u>80%</u>	<u>USD 148,000</u>
After posting of applications until posting of Initial Evaluation results	70%	USD 130,000
After posting Initial Evaluation results	35%	USD 65,000
After the applicant has completed Dispute Resolution, Extended Evaluation, or String Contention Resolution(s)	20%	USD 37,000
After the applicant has entered into a registry agreement with ICANN		None

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

An applicant that wishes to withdraw an application must initiate the process through TAS and submit the required form to request a refund, including agreement to the terms and conditions for withdrawal. Refunds will only be issued to the organization that submitted the original payment. All refunds are paid by wire transfer. Any bank transfer or transaction fees incurred by ICANN will be deducted from the amount paid.

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

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

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

### *1.5.2 Fees Required in Some Cases*

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

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

any response that an applicant files to an objection. This fee is payable directly to the applicable dispute resolution service provider in accordance with the provider's payment instructions. ICANN estimates that filing fees could range from approximately USD 1,000 to USD 5,000 (or more) per party per proceeding. Refer to the appropriate provider for the relevant amount. Refer to Module 3 for dispute resolution procedures.

- **Advance Payment of Costs** – In the event of a formal objection, this amount is payable directly to the applicable dispute resolution service provider in accordance with that provider's procedures and schedule of costs. Ordinarily, both parties in the dispute resolution proceeding will be required to submit an advance payment of costs in an estimated amount to cover the entire cost of the proceeding. This may be either an hourly fee based on the estimated number of hours the panelists will spend on the case (including review of submissions, facilitation of a hearing, if allowed, and preparation of a decision), or a fixed amount. In cases where disputes are consolidated and there are more than two parties involved, the advance payment will occur according to the dispute resolution service provider's rules.

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

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

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

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

### *1.5.3 Payment Methods*

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Payments to ICANN should be submitted by **wire transfer**. Instructions for making a payment by wire transfer will be available in TAS.<sup>9</sup>

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

### *1.5.4 Requesting a Remittance Form*

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

## *1.6 Questions about this Applicant Guidebook*

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For assistance and questions an applicant may have in the process of completing the application form, applicants should use the customer support resources available through TAS. Applicants who are unsure of the information being sought in a question or the parameters for acceptable documentation are encouraged to communicate these questions through the appropriate support channels before the application is submitted. This helps avoid the need for exchanges with evaluators to

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<sup>9</sup> Wire transfer is the preferred method of payment as it offers a globally accessible and dependable means for international transfer of funds. This enables ICANN to receive the fee and begin processing applications as quickly as possible.

clarify information, which extends the timeframe associated with the application.

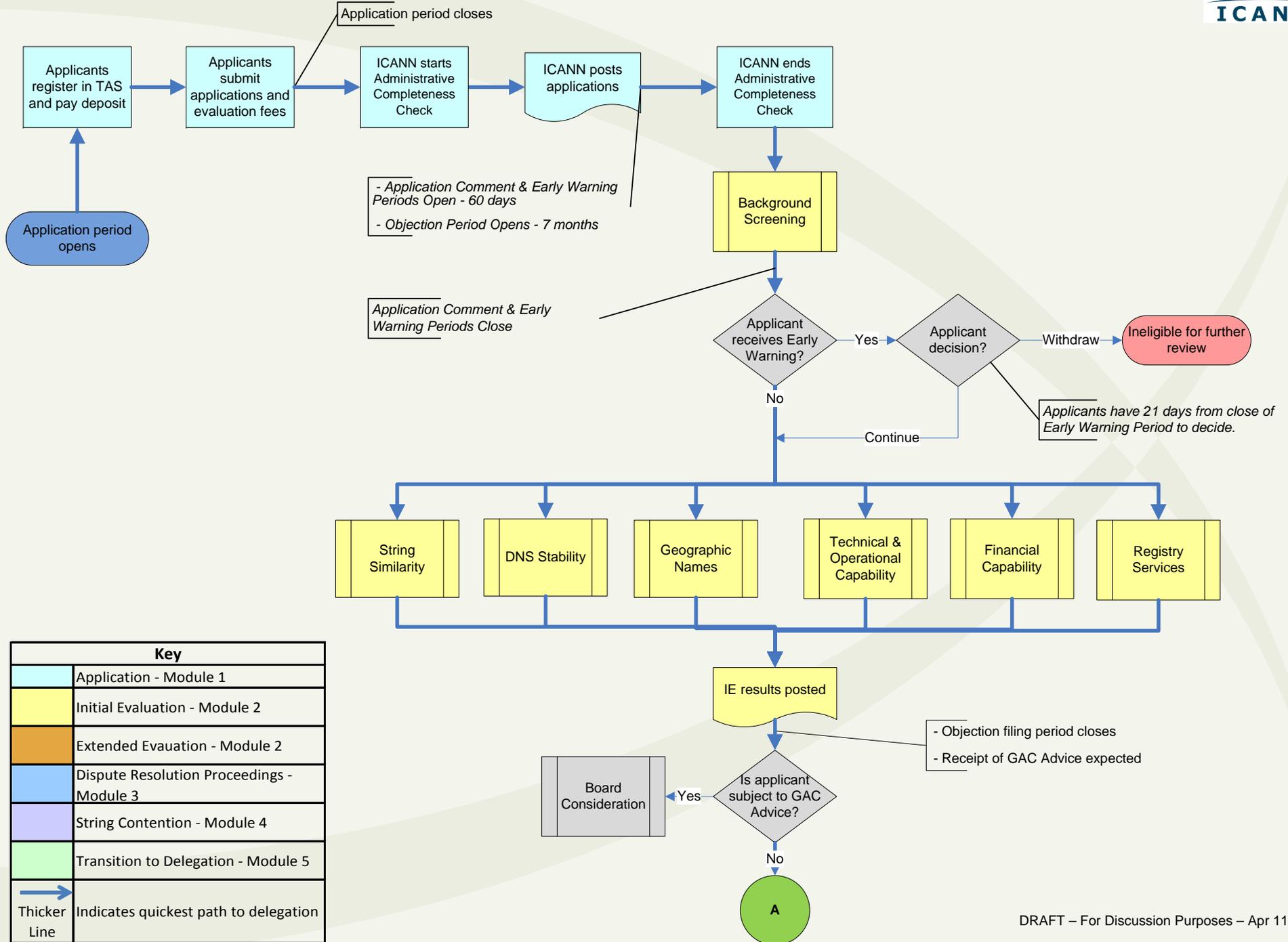
Questions may be submitted via the TAS support link. To provide all applicants equitable access to information, ICANN will make all questions and answers publicly available.

All requests to ICANN for information about the process or issues surrounding preparation of an application must be submitted in writing via the designated support channels. ICANN will not grant requests from applicants for personal or telephone consultations regarding the preparation of an application. Applicants that contact ICANN for clarification about aspects of the application will be referred to the dedicated online question and answer area.

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

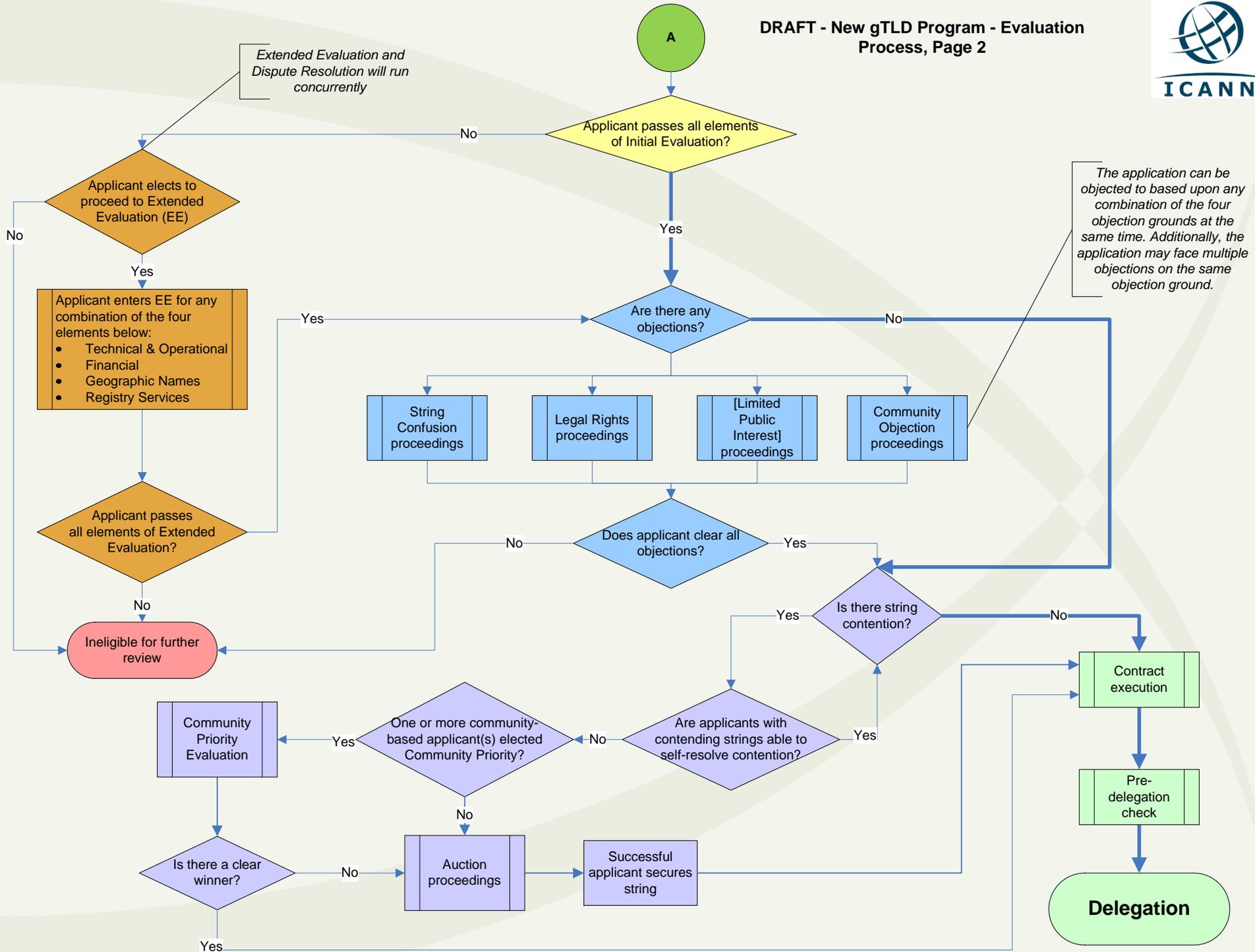


# DRAFT - New gTLD Program - Evaluation Process





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# Applicant Guidebook

## April 2011 Discussion Draft Module 2

Please note that this is a discussion draft only. Potential applicants should not rely on any of the proposed details of the new gTLD program as the program remains subject to further consultation and revision.

15 April 2011

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# Module 2

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## *Evaluation Procedures*

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

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

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

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

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

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

### *2.1 Background Screening*

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Background screening will be conducted in two areas:

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

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

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

### *2.1.1 General business diligence and criminal history*

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

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

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

Note that the applicant is expected to disclose potential problems in meeting the criteria in the application, and provide any clarification or explanation at the time of application submission. If any hits are Results returned from the background screening process, they will be matched with the disclosures provided by the applicant and those cases will be followed up to resolve issues of discrepancies or potential false positives.

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<sup>1</sup> See <http://www.world-exchanges.org/files/statistics/excel/EQUITY109.xls>

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

### *2.1.2 History of cybersquatting*

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

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

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

## *2.2 Initial Evaluation*

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

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

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

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

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

## 2.2.1 *String Reviews*

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

### 2.2.1.1 *String Similarity Review*

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

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

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

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

#### 2.2.1.1.1 *Reviews Performed*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **2.2.1.1.2 Review Methodology**

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

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

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

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

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

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

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

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

#### ***2.2.1.1.3 Outcomes of the String Similarity Review***

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

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

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

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

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

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

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

**2.2.1.2 Reserved Names**

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

**Top-Level Reserved Names List**

<i>AFRINIC</i>	<i>IANA-SERVERS</i>	<i>NRO</i>
<i>ALAC</i>	<i>ICANN</i>	<i>RFC-EDITOR</i>
<i>APNIC</i>	<i>IESG</i>	<i>RIPE</i>
<i>ARIN</i>	<i>IETF</i>	<i>ROOT-SERVERS</i>
<i>ASO</i>	<i>INTERNIC</i>	<i>RSSAC</i>
<i>CCNSO</i>	<i>INVALID</i>	<i>SSAC</i>
<i>EXAMPLE*</i>	<i>IRTF</i>	<i>TEST*</i>
<i>GAC</i>	<i>ISTF</i>	<i>TLD</i>
<i>GNSO</i>	<i>LACNIC</i>	<i>WHOIS</i>
<i>GTLD-SERVERS</i>	<i>LOCAL</i>	<i>WWW</i>
<i>IAB</i>	<i>LOCALHOST</i>	
<i>IANA</i>	<i>NIC</i>	

\*Note that in addition to the above strings, ICANN will reserve translations of the terms "test" and "example" in multiple languages. The remainder of the strings are reserved only in the form included above.

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

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

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

### *2.2.1.3 DNS Stability Review*

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

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

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

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

[string raises significant security or stability issues as described in the following section.](#)

#### 2.2.1.3.1 *DNS Stability: String Review Procedure*

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

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

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

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

If the panel determines that the string complies with relevant standards and does not create the conditions described above, the application will pass the DNS Stability review.

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

#### 2.2.1.3.2 *String Requirements*<sup>4</sup>

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<sup>4</sup>The string requirements have been revised according to revisions of RFC 1123 in progress in the IETF. See <http://tools.ietf.org/html/draft-lian-ld-names-04>.

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

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

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

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

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

- 2.1 The label must be an A-label as defined in IDNA, converted from (and convertible to) a U-label that is consistent with the definition in IDNA, and further

restricted by the following, non-exhaustive, list of limitations:

- 2.1.1 Must be a valid A-label according to IDNA.
  - 2.1.2 The derived property value of all codepoints used in the U-label, as defined by IDNA, must be PVALID or CONTEXT (and be accompanied by unambiguous contextual rules) where necessary.<sup>5</sup>
  - 2.1.3 The general category of all codepoints, as defined by IDNA, must be one of (Ll, Ll, Ll, Mn).
  - 2.1.4 The U-label must be fully compliant with Normalization Form C, as described in *Unicode Standard Annex #15: Unicode Normalization Forms*. See also examples in <http://unicode.org/faq/normalization.html>.
  - 2.1.5 The U-label must consist entirely of characters with the same directional property, or fulfill the requirements of the Bidi rule per RFC 5893.
- 2.2 The label must meet the relevant criteria of the ICANN *Guidelines for the Implementation of Internationalised Domain Names*. See <http://www.icann.org/en/topics/idn/implementation-guidelines.htm>. This includes the following, non-exhaustive, list of limitations:
- 2.2.1 All code points in a single label must be taken from the same script as determined by the Unicode Standard Annex #24: Unicode Script Property.
  - 2.2.2 Exceptions to 2.2.1 are permissible for languages with established orthographies and conventions that require the commingled use of multiple scripts. However, even with this exception, visually confusable characters from different scripts

<sup>5</sup> It is expected that conversion tools for IDNA ~~2008~~ will be available before the Application Submission period begins, and that labels will be checked for validity under IDNA ~~2008~~. In this case, labels valid under the previous version of the protocol (IDNA2003) but not under IDNA ~~2008~~ will not meet this element of the requirements. Labels that are valid under both versions of the protocol will meet this element of the requirements. Labels valid under IDNA ~~2008~~ but not under IDNA2003 may meet the requirements; however, applicants are strongly advised to note that the duration of the transition period between the two protocols cannot presently be estimated nor guaranteed in any specific timeframe. The development of support for IDNA ~~2008~~ in the broader software applications environment will occur gradually. During that time, TLD labels that are valid under IDNA ~~2008~~, but not under IDNA2003, will have limited functionality.

will not be allowed to co-exist in a single set of permissible code points unless a corresponding policy and character table are clearly defined.

**Part III - Policy Requirements for Generic Top-Level**

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

- 3.1 Applied-for gTLD strings in ASCII must be composed of three or more visually distinct characters. Two-character ASCII strings are not permitted, to avoid conflicting with current and future country codes based on the ISO 3166-1 standard.
- 3.2 Applied-for gTLD strings in IDN scripts must be composed of two or more visually distinct characters in the script, as appropriate.<sup>6</sup> Note, however, that a two-character IDN string will not be approved if:
  - 3.2.1 It is visually similar to any one-character label (in any script); or
  - 3.2.2 It is visually similar to any possible two-character ASCII combination.

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

**2.2.1.4 Geographic Names Review**

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

**2.2.1.4.1 Treatment of Country or Territory Names<sup>7</sup>**

<sup>6</sup> Note that the Joint ccNSO-GNSO IDN Working Group (JIG) has made recommendations that this section be revised to allow for single-character IDN gTLD labels. See the JIG Final Report at <http://ccnso.icann.org/node/15245>. Implementation models for these recommendations are being developed for community discussion.

<sup>7</sup> Country and territory names are excluded from the process based on advice from the Governmental Advisory Committee in recent communiqués providing interpretation of Principle 2.2 of the GAC Principles regarding New gTLDs to indicate that strings which

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

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

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

#### 2.2.1.4.2 *Geographic Names Requiring Government Support*

The following types of applied-for strings are considered geographic names and must be accompanied by

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are a meaningful representation or abbreviation of a country or territory name should be handled through the forthcoming ccPDP, and other geographic strings could be allowed in the gTLD space if in agreement with the relevant government or public authority.

documentation of support or non-objection from the relevant governments or public authorities:

1. An application for any string that is a representation, in any language, of the capital city name of any country or territory listed in the ISO 3166-1 standard.

~~In this case, it is anticipated that the relevant government or public authority would be at the national level.~~

2. An application for a city name, where the applicant declares that it intends to use the gTLD for purposes associated with the city name.

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

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

- (a) It is clear from applicant statements within the application that the applicant will use the TLD primarily for purposes associated with the city name; and
- (b) The applied-for string is a city name as listed on official city documents.<sup>8</sup>

~~In the case of an application that meets conditions (a) and (b), documentation of support will be required only from the relevant government or public authority of the city named in the application.~~

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<sup>8</sup> City governments with concerns about strings that are duplicates, nicknames or close renderings of a city name should not rely on the evaluation process as the primary means of protecting their interests in a string. Rather, a government may elect to file a formal objection to an application that is opposed by the relevant community, or may submit its own application for the string.

3. An application for any string that is an exact match of a *sub-national place name*, such as a county, province, or state, listed in the ISO 3166-2 standard.

~~In this case, it is anticipated that the relevant government or public authority would be at the sub-national level, such as a state, provincial or local government or authority.~~

4. An application for a string listed as a UNESCO region<sup>9</sup> or appearing on the "Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings" list.<sup>10</sup>

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

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

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

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

In the event that there is more than one relevant government or public authority for the applied-for gTLD

<sup>9</sup> See <http://www.unesco.org/new/en/unesco/worldwide/>.

<sup>10</sup> See <http://unstats.un.org/unsd/methods/m49/m49regin.htm>.

string, the applicant must provide documentation of support or non-objection from all the relevant governments or public authorities. It is anticipated that this may apply to the case of a sub-national place name.

It is the applicant's responsibility to:

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

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

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

#### **2.2.1.4.3 Documentation Requirements**

The documentation of support or non-objection should include a signed letter from the relevant government or public authority. Understanding that this will differ across the respective jurisdictions, the letter could be signed by the minister with the portfolio responsible for domain name administration, ICT, foreign affairs, or the Office of the Prime Minister or President of the relevant jurisdiction; or a senior representative of the agency or department responsible for domain name administration, ICT, foreign affairs, or the Office of the Prime Minister. To assist the applicant in determining who the relevant government or public authority may be for a potential geographic name, the applicant may wish to consult with the relevant Governmental Advisory Committee (GAC) representative.<sup>11</sup>

The letter must clearly express the government's or public authority's support for or non-objection to the applicant's

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<sup>11</sup> See <http://gac.icann.org/gac-members>

application and demonstrate the government's or public authority's understanding of the string being requested and its intended use.

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

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

It is important to note that a government or public authority is under no obligation to provide documentation of support or non-objection in response to a request by an applicant.<sup>12</sup>

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

#### *2.2.1.4.4 Review Procedure for Geographic Names*

A Geographic Names Panel (GNP) will determine whether each applied-for gTLD string represents a geographic name, and verify the relevance and authenticity of the supporting documentation where necessary.

The GNP will review all applications received, not only those where the applicant has noted its applied-for gTLD string as a geographic name. For any application where the GNP determines that the applied-for gTLD string is a country or territory name (as defined in this module), the

<sup>12</sup> It is also possible that a government may withdraw its support for an application at a later time, including after the new gTLD has been delegated, if registry operator has deviated from the conditions of original support or non-objection.

application will not pass the Geographic Names review and will be denied. No additional reviews will be available.

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

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

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

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

If there is more than one application for a string representing a certain geographic name as described in this section, and the applications have requisite government approvals, the applications will be suspended pending resolution by the applicants. However, in the event that a contention set is composed of multiple applications with documentation of support from the same

government or public authority, the applications will proceed through the contention resolution procedures described in Module 4 when requested by the government or public authority providing the documentation.

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

## 2.2.2 *Applicant Reviews*

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

### 2.2.2.1 *Technical/Operational Review*

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

Applicants are not required to have deployed an actual gTLD registry to pass the Technical/Operational review. It will be necessary, however, for an applicant to demonstrate a clear understanding and accomplishment of some groundwork toward the key technical and operational aspects of a gTLD registry operation. Subsequently, each applicant that passes the technical evaluation and all other steps will be required to complete a pre-delegation technical test prior to delegation of the new gTLD. Refer to Module 5, Transition to Delegation, for additional information.

### 2.2.2.2 *Financial Review*

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

Because different registry types and purposes may justify different responses to individual questions, evaluators will pay particular attention to the consistency of an

application across all criteria. For example, an applicant's scaling plans identifying system hardware to ensure its capacity to operate at a particular volume level should be consistent with its financial plans to secure the necessary equipment. That is, the evaluation criteria scale with the applicant plans to provide flexibility.

### 2.2.2.3 *Evaluation Methodology*

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

The evaluators may request clarification or additional information during the Initial Evaluation period. For each application, clarifying questions will be consolidated and sent to the applicant from each of the panels. The applicant will thus have an opportunity to clarify or supplement the application in those areas where a request is made by the evaluators. These communications will occur via the online application system ([TAS](#)), rather than by phone, letter, email, or other means. Unless otherwise noted, such communications will include a 3-week deadline for the applicant to respond. Any supplemental information provided by the applicant will become part of the application.

It is the applicant's responsibility to ensure that the questions have been fully answered and the required documentation is attached. Evaluators are entitled, but not obliged, to request further information or evidence from an applicant, and are not obliged to take into account any information or evidence that is not made available in the application and submitted by the due date, unless explicitly requested by the evaluators.

### 2.2.3 *Registry Services Review*

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

#### 2.2.3.1 *Definitions*

**Registry services** are defined as:

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

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

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

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

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

**Security** – an effect on security by the proposed registry service means (1) the unauthorized disclosure, alteration, insertion or destruction of registry data, or (2) the unauthorized access to or disclosure of information or resources on the Internet by systems operating in accordance with all applicable standards.

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

authoritative standards body, such as relevant standards-track or best current practice RFCs and relying on registry operator's delegation information or provisioning services.

### 2.2.3.2 *Customary Services*

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

- Receipt of data from registrars concerning registration of domain names and name servers
- Dissemination of TLD zone files
- Dissemination of contact or other information concerning domain name registrations
- DNS Security Extensions

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

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

### 2.2.3.3 *TLD Zone Contents*

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

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

An applicant wishing to place any other record types into its TLD zone should describe in detail its proposal in the registry services section of the application. This will be evaluated and could result in an extended evaluation to determine whether the service would create a risk of a meaningful adverse impact on security or stability of the DNS. Applicants should be aware that a service based on

use of less-common DNS resource records in the TLD zone, even if approved in the registry services review, might not work as intended for all users due to lack of application support.

#### **2.2.3.4 Methodology**

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

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

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

#### **2.2.4 Applicant's Withdrawal of an Application**

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

### **2.3 Extended Evaluation**

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

- Geographic names (refer to subsection 2.2.1.4). – There is no additional fee for an extended evaluation in this instance.
- Demonstration of technical and operational capability (refer to subsection 2.2.2.1). There is no additional fee for an extended evaluation in this instance.
- Demonstration of financial capability (refer to subsection 2.2.2.2). There is no additional fee for an extended evaluation in this instance.

- Registry services (refer to subsection 2.2.3). Note that this investigation incurs an additional fee (the Registry Services Review Fee) if the applicant wishes to proceed. See Section 1.5 of Module 1 for fee and payment information.

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

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

### *2.3.1 Geographic Names Extended Evaluation*

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

If the applicant submits the documentation to the Geographic Names Panel by the required date, the GNP will perform its review of the documentation as detailed in section 2.2.1.4. If the applicant has not provided the documentation by the required date (at least 90 days from the date of the notice), the application will not pass the Extended Evaluation, and no further reviews are available.

### *2.3.2 Technical/Operational or Financial Extended Evaluation*

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

An applicant who has requested Extended Evaluation will again access the online application system ([TAS](#)) and clarify its answers to those questions or sections on which it received a non-passing score. The answers should be responsive to the evaluator report that indicates the reasons for failure. Applicants may not use the Extended Evaluation period to substitute portions of new information

for the information submitted in their original applications, i.e., to materially change the application.

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

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

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

### ***2.3.3 Registry Services Extended Evaluation***

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

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

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

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

If the RSTEP finds that one or more of the applicant's proposed registry services may be introduced without risk of a meaningful adverse effect on security or stability, these services will be included in the applicant's [registry](#).

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

## 2.4 *Parties Involved in Evaluation*

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

### 2.4.1 *Panels and Roles*

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

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

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

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

may also occur in Extended Evaluation if elected by the applicant.

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

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

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

#### **2.4.2 Panel Selection Process**

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ICANN is in the process of selecting qualified third-party providers to perform the various reviews.<sup>13</sup> In addition to the specific subject matter expertise required for each panel, specified qualifications are required, including:

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

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<sup>13</sup> See <http://icann.org/en/topics/new-gtlds/open-tenders-eoi-en.htm>.

- The provider must be able to evaluate the applications within the required timeframes of Initial and Extended Evaluation.

The providers will be formally engaged and announced on ICANN's website prior to the opening of the Application Submission period.

### ***2.4.3 Code of Conduct Guidelines for Panelists***

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

Panelists shall conduct themselves as thoughtful, competent, well prepared, and impartial professionals throughout the application process. Panelists are expected to comply with equity and high ethical standards while assuring the Internet community, its constituents, and the public of objectivity, integrity, confidentiality, and credibility. Unethical actions, or even the appearance of compromise, are not acceptable. Panelists are expected to be guided by the following principles in carrying out their respective responsibilities. This Code is intended to summarize the principles and nothing in this Code should be considered as limiting duties, obligations or legal requirements with which Panelists must comply.

***Bias*** -- Panelists shall:

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

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

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

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

**Confidentiality** -- Confidentiality is an integral part of the evaluation process. Panelists must have access to sensitive information in order to conduct evaluations. Panelists must maintain confidentiality of information entrusted to them by ICANN and the Applicant and any other confidential information provided to them from whatever source, except when disclosure is legally mandated or has been authorized by ICANN. "Confidential information" includes all elements of the Program and information gathered as part of the process – which includes but is not limited to: documents, interviews, discussions, interpretations, and analyses – related to the review of any new gTLD application.

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

#### **2.4.3.1 Conflict of Interest Guidelines for Panelists**

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

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

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

**Compliance Period** -- All Evaluation Panelists must comply with the Conflict of Interest guidelines beginning with the opening date of the Application Submission period and ending with the public announcement by ICANN of the final outcomes of all the applications from the Applicant in question.

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

Evaluation Panelists and Immediate Family Members:

- Must not be under contract, have or be included in a current proposal to provide Professional Services for or on behalf of the Applicant during the Compliance Period.
- Must not currently hold or be committed to acquire any interest in a privately-held Applicant.
- Must not currently hold or be committed to acquire more than 1% of any publicly listed Applicant's outstanding equity securities or other ownership interests.

- Must not be involved or have an interest in a joint venture, partnership or other business arrangement with the Applicant.
- Must not have been named in a lawsuit with or against the Applicant.
- Must not be a:
  - Director, officer, or employee, or in any capacity equivalent to that of a member of management of the Applicant;
  - Promoter, underwriter, or voting trustee of the Applicant; or
  - Trustee for any pension or profit-sharing trust of the Applicant.

***Definitions--***

Evaluation Panelist: An Evaluation Panelist is any individual associated with the review of an application. This includes any primary, secondary, and contingent third party Panelists engaged by ICANN to review new gTLD applications.

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

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

***2.4.3.2 Code of Conduct Violations***

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

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

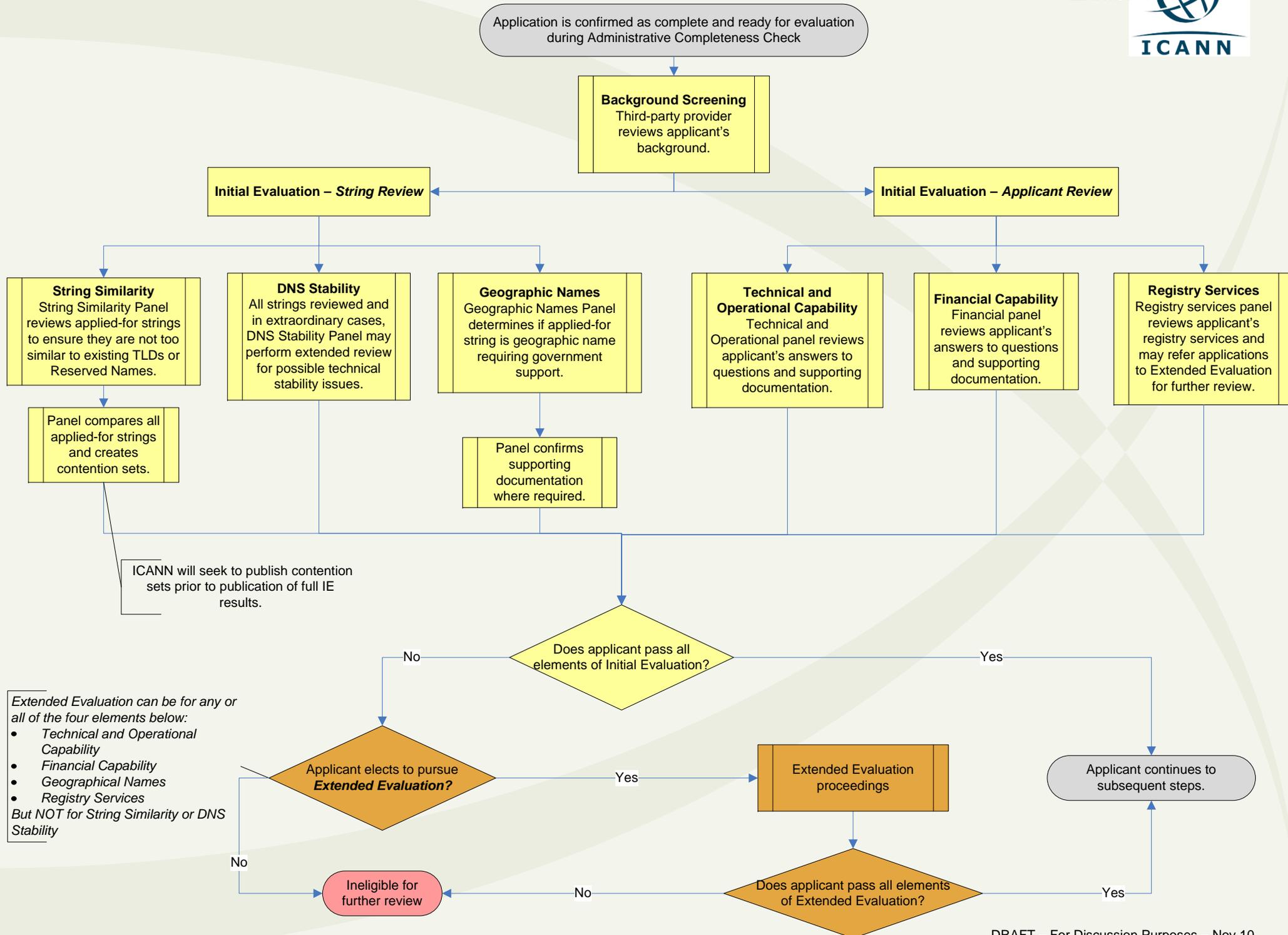
Complaints about violations of the Code of Conduct by a Panelist may be brought to the attention of ICANN via the public comment and applicant support mechanisms, throughout the evaluation period. Concerns of applicants regarding panels should be communicated via the defined support channels (see subsection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

#### ***2.4.4 Communication Channels***

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

# DRAFT - New gTLD Program – Initial Evaluation and Extended Evaluation



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

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

But NOT for String Similarity or DNS Stability

## Annex: Separable Country Names List

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

Separable Country Names List

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

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

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

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

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

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

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

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

### Eligibility

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

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

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

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

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# Attachment to Module 2

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## Sample Letter of Government Support

**[This letter should be provided on official letterhead]**

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

Attention: New gTLD Evaluation Process

Subject: Letter for support for [TLD requested]

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

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

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

[Government / public authority] further understands ~~that the Registry Agreement provides~~ that, in the event of a dispute between [government/public authority] and the applicant, ICANN ~~will~~may implement the order of any court sitting in such jurisdiction in favor of such governmental entity related to the TLD. comply with a legally binding order from a court in the jurisdiction of [government/public authority].

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

**[Optional]** I can advise that in the event that this application is successful [xx government/public authority] will enter into a separate agreement with the applicant. This agreement will outline the conditions under which we support them in the operation of the TLD, and circumstances

under which we would withdraw that support. ICANN will not be a party to this agreement, and enforcement of this agreement lies fully with [government/public authority].

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

Thank you for the opportunity to support this application.

Yours sincerely

Signature from relevant government/public authority

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# *Attachment to Module 2*

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## *Evaluation Questions and Criteria*

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Since ICANN was founded 10 years ago as a not-for-profit, multi-stakeholder organization, one of its key mandates has been to promote competition in the domain name market. ICANN's mission specifically calls for the corporation to maintain and build on processes that will ensure competition and consumer interests – without compromising Internet security and stability. This includes the consideration and implementation of new gTLDs. It is ICANN's goal to make the criteria and evaluation as objective as possible.

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

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

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

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

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

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

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

Evaluation and scoring (detailed below) will emphasize:

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

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

### III. Scoring

#### Evaluation

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

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

#### Scoring

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

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

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

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

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

Note on April 2011 Discussion Draft: A number of the evaluation questions have been edited to provide more detail for applicants on the elements of a complete answer and to more clearly distinguish the components required for a score of 1 versus 2 (passing versus exceeding requirements). In most cases, the substance of the question and criteria has not changed significantly.

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
Applicant Information	1	Full legal name of the Applicant (the established entity that would enter into a Registry Agreement with ICANN)	Y	Responses to Questions 1 - 12 are required for a complete application. Responses are not scored.			
	2	Address of the principal place of business of the Applicant. This address will be used for contractual purposes. No Post Office boxes are allowed.	Y				
	3	Phone number for the Applicant's principal place of business.	Y				
	4	Fax number for the Applicant's principal place of business.	Y				
	5	Website or URL, if applicable.	Y				
Primary Contact for this Application	6	Name	Y	The primary contact will receive all communications regarding the application. Either the primary or the secondary contact may respond. In the event of a conflict, the communication received from the primary contact will be taken as authoritative. Both contacts listed should also be prepared to receive inquiries from the public.			
		Title	Y				
		Address	Y				
		Phone number	Y				
		Fax number	Y				
		Email address	Y				
Secondary Contact for this Application	7	Name	Y	The secondary contact will be copied on all communications regarding the application. Either the primary or the secondary contact may respond.			
		Title	Y				
		Address	Y				
		Phone number	Y				
		Fax number	Y				
		Email address	Y				
Proof of Legal Establishment	8	(a) Legal form of the Applicant. (e.g., <del>limited liability</del> partnership, corporation, non-profit institution).	Y				

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		(b) State the specific national or other jurisdictional law that defines the type of entity identified in 8(a). <del>Identify any relevant section references and provide a URL to the document if available online.</del>	Y	<u>In the event of questions regarding proof of establishment, the applicant may be asked for additional details, such as the specific national or other law applying to this type of entity.</u>			
		(c) Attach evidence of the applicant's establishment as the type of entity identified in Question 8(a) above, in accordance with the applicable laws identified in Question 8(b).	Y	Applications without valid proof of legal establishment will not be evaluated further.			
	9	(a) If the applying entity is publicly traded, provide the exchange and symbol.	Y				
		(b) If the applying entity is a subsidiary, provide the parent company.	Y				
		(c) If the applying entity is a joint venture, list all joint venture partners.	Y				
	10	Business ID, Tax ID, VAT registration number, or equivalent of the Applicant.	N				
Applicant Background	11	(a) Enter the full name, contact information (permanent residence), and position of all directors (i.e., members of the applicant's Board of Directors, if applicable).	<u>Partial</u> <del>N</del>	<p><u>Applicants should be aware that the names and positions of the individuals listed in response to this question will be published as part of the application. The contact information listed for individuals is for identification purposes only and will not be published as part of the application.</u></p> <p>Background checks may be conducted on individuals named in the applicant's response to question 11. Any material misstatement or misrepresentation (or omission of material information) may cause the application to be rejected.</p> <p><u>The applicant certifies that it has obtained permission for the posting of the names and positions of individuals included in this application.</u></p>			
		(b) Enter the full name, contact information (permanent residence), and position of all officers and partners. Officers are high-level management officials of a corporation or business, for example, a CEO, vice president, secretary, chief financial officer. Partners would be listed in the context of a partnership or other such form of legal entity.	<u>Partial</u> <del>N</del>				

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		(c) Enter the full name, contact information (permanent residence of individual or principal place of business of entity) and position of all shareholders holding at least 15% of shares, and percentage held by each.	<u>Partial</u> <del>N</del>				
		<u>(d) For an applying entity that does not have directors, officers, partners, or shareholders, enter the full name, contact information (permanent residence of individual or principal place of business of entity) and position of all individuals having direct responsibility for registry operations.</u>	<u>Partial</u>				
		<p><del>(e)</del> Indicate whether the applicant or any of <u>the individuals its directors, officers, partners, or shareholders</u> named above:</p> <ul style="list-style-type: none"> <li>i. within the past ten years, has been convicted of <u>any crime a felony, or of a misdemeanor</u> related to financial or corporate governance activities, or has been judged by a court to have committed fraud or breach of fiduciary duty, or has been the subject of a judicial determination that is similar or related to any of these;</li> <li>ii. within the past ten years, has been disciplined by a government for conduct involving dishonesty or misuse of funds of others;</li> <li>iii. within the past ten years has been convicted of any willful tax-related fraud or willful evasion of tax liabilities;</li> <li>iv. within the past ten years has been convicted of perjury, forswearing, failing to cooperate with a law enforcement investigation, or making false statements to a law enforcement agency or representative;</li> <li><u>v. has ever been convicted of any crime involving the use of computers, telephony systems, telecommunications or the internet to facilitate the commission of crimes;</u></li> <li>vi. has ever been convicted of any crime involving the use of a weapon, force, or the threat of force;</li> <li>vii. has ever been convicted of any violent or sexual offense victimizing children, the elderly, or</li> </ul>	N	ICANN may deny an otherwise qualified application if eligibility criteria are not met. See section 1.2.1 of the guidebook.			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>individuals with disabilities;</p> <p><u>viii. has ever been convicted of the illegal sale, manufacture, or distribution of pharmaceutical drugs, or been convicted or successfully extradited for any offense or substantially similar to any offense described in Article 3 of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988;</u></p> <p><u>ix. has ever been convicted or successfully extradited for any offense or substantially similar to any offense described in the United Nations Convention against Transnational Organized Crime (all Protocols);</u></p> <p>x. has been convicted of aiding, abetting, facilitating, enabling, conspiring to commit, or failing to report any of the listed crimes within the respective timeframes specified above;</p> <p>xi. has entered a guilty plea as part of a plea agreement or has a court case in any jurisdiction with a disposition of Adjudicated Guilty or Adjudication Withheld (or regional equivalents) for any of the listed crimes within the respective timeframes listed above;</p> <p>xii. is the subject of a disqualification imposed by ICANN and in effect at the time of this application.</p> <p>If any of the above events have occurred, please provide details.</p>					
		<p>(f) Indicate whether the applicant or any of <u>the individuals, its directors, officers, partners, or shareholders</u> named above have been involved in any decisions indicating that the applicant or individual named in the application was engaged in cybersquatting, as defined in the UDRP, ACPA, or other equivalent legislation.</p>	N	<p>ICANN may deny an otherwise qualified application if eligibility criteria are not met. See section 1.2.1 of the guidebook for details.</p>			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		(g) Disclose whether the applicant <u>or any of the individuals named above</u> has been involved in any administrative or other legal proceeding in which allegations of intellectual property infringement relating to registration or use of a domain name have been made. Provide an explanation related to each such instance.	N	ICANN may deny an otherwise qualified application if eligibility criteria are not met. See section 1.2.1 of the guidebook for details.			
		(h) Provide an explanation for any additional background information that may be found concerning the applicant or any individual named in the application.	N				
Evaluation Fee	12	(a) Enter the confirmation information for payment of the evaluation fee (e.g., wire transfer confirmation number).	N	The evaluation fee is paid in the form of a deposit at the time of user registration, and submission of the remaining amount at the time the full application is submitted. The information in question 12 is required for each payment.			
		(b) Payer name	N				
		(c) Payer address	N				
		(d) Wiring bank	N				
		(e) Bank address	N				
		(f) Wire date	N				
Applied-for gTLD string	13	Provide the applied-for gTLD string. If applying for an IDN, provide the U-label.	Y	Responses to Questions 13- 17 are not scored, but are used for database and validation purposes.  The U-label is an IDNA-valid string of Unicode characters, including at least one non-ASCII character.			
	14	(a) If applying for an IDN, provide the A-label (beginning with "xn--").	Y				
		(b) If an IDN, provide the meaning, or restatement of the string in English, that is, a description of the literal meaning of the string in the opinion of the applicant.	Y				
		(c) If an IDN, provide the language of the label (both in English and as referenced by ISO-639-1).	Y				

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		(d) If an IDN, provide the script of the label (both in English and as referenced by ISO 15924).	Y				
		(e) If an IDN, list all code points contained in the U-label according to Unicode form.	Y	For example, the string "HELLO" would be listed as U+0048 U+0065 U+006C U+006C U+006F.			
	15	<p>(a) If an IDN, upload IDN tables for the proposed registry. An IDN table must include:</p> <ol style="list-style-type: none"> <li>1. the applied-for gTLD string relevant to the tables,</li> <li>2. the script or language designator (as defined in BCP 47),</li> <li>3. table version number,</li> <li>4. effective date (DD Month YYYY), and</li> <li>5. contact name, email address, and phone number.</li> </ol> <p>Submission of IDN tables in a standards-based format is encouraged.</p>	Y	In the case of an application for an IDN gTLD, IDN tables must be submitted for the language or script for the applied-for gTLD string. IDN tables must also be submitted for each language or script in which the applicant intends to offer IDN registrations at the second level.			
		(b) Describe the process used for development of the IDN tables submitted, including consultations and sources used.	Y				
		(c) List any variants to the applied-for gTLD string according to the relevant IDN tables.	Y	Variant TLD strings will not be delegated as a result of this application. Variant strings will be checked for consistency and, if the application is approved, will be entered on a Declared IDN Variants List to allow for future allocation once a variant management mechanism is established for the top level. Inclusion of variant TLD strings in this application is for information only and confers no right or claim to these strings upon the applicant.			
	16	<del>If an IDN, d</del> Describe the applicant's efforts to ensure that there are no known operational or rendering problems concerning the applied-for gTLD string. If such issues are known, describe steps that will be taken to mitigate these issues in software and other applications.	Y				
	17	<p><b>OPTIONAL.</b> Provide a representation of the label according to the International Phonetic Alphabet (<a href="http://www.langsci.ucl.ac.uk/ipa/">http://www.langsci.ucl.ac.uk/ipa/</a>).</p>	Y	If provided, this information will be used as a guide to ICANN in communications regarding the application.			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
Mission/Purpose	18	<u>(a)</u> Describe the mission/purpose of your proposed gTLD.	Y	<p><del>Applicants are encouraged to provide a thorough and detailed description to enable informed consultation and comment. Responses to this question are not scored. The information gathered in response to Question 18 is intended to inform the post-launch review of the New gTLD Program, from the perspective of assessing the relative costs and benefits achieved in the expanded gTLD space.</del></p> <p><del>For the application to be considered complete, answers to this section must be fulsome and sufficiently quantitative and detailed to inform future study on plans vs. results.</del></p> <p><del>The New gTLD Program will be reviewed, as specified in section 9.3 of the Affirmation of Commitments. This will include consideration of the extent to which the introduction or expansion of gTLDs has promoted competition, consumer trust and consumer choice, as well as effectiveness of (a) the application and evaluation process, and (b) safeguards put in place to mitigate issues involved in the introduction or expansion.</del></p> <p><del>The information gathered in this section will be one source of input to help inform this review. This information is not used as part of the evaluation or scoring, except to the extent that the information may overlap with questions or evaluation areas that are scored.</del></p> <p>An applicant wishing to designate this application as community-based should ensure that <del>these</del> responses <del>are</del> consistent with its responses for question 20 below.</p>			
		<p><u>(b)</u> How do you expect that your proposed gTLD will benefit registrants, Internet users, and others? Answers should address the following points:</p> <p>i. <u>What is the goal of your proposed gTLD in terms of areas of specialty.</u></p>	<u>Y</u>				

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p><u>service levels, or reputation?</u></p> <p>ii. <u>What do you anticipate your proposed gTLD will add to the current space, in terms of competition, differentiation, or innovation?</u></p> <p>iii. <u>What goals does your proposed gTLD have in terms of user experience?</u></p> <p>iv. <u>Provide a complete description of the applicant's intended registration policies in support of the goals listed above.</u></p> <p>v. <u>Will your proposed gTLD impose any measures for protecting the privacy or confidential information of registrants or users? If so, please describe any such measures.</u></p> <p>vi. <u>Describe whether and in what ways outreach and communications will help to achieve your projected benefits.</u></p>					
	18	<p>(c) <u>What operating rules will you adopt to eliminate or minimize social costs (e.g., time or financial resource costs, as well as various types of consumer vulnerabilities)? What other steps will you take to minimize negative consequences/costs imposed upon consumers? Answers should address the following points:</u></p> <p>i. <u>How will multiple applications for a particular domain name be resolved, for example, by auction or on a first-come/first-serve basis?</u></p> <p>ii. <u>Explain any cost benefits for registrants you intend to implement (e.g., advantageous pricing, introductory discounts, bulk</u></p>	Y				

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p><u>registration discounts).</u></p> <p>iii. <u>Do you intend to offer registrants the ability to obtain long term (or permanent) contracts for domain names? Do you intend to make contractual commitments to registrants regarding the magnitude of price escalation? If so, please describe your plans.</u></p> <p>iv. <u>Will you impose any constraints on parked sites, or sites that offer only advertising?</u></p>					
Community-based Designation	19	Is the application for a community-based TLD?	Y	<p>There is a presumption that the application is a standard application (as defined in the Applicant Guidebook) if this question is left unanswered.</p> <p>The applicant's designation as standard or community-based cannot be changed once the application is submitted.</p>			
	20	<p>(a) Provide the name and full description of the community that the applicant is committing to serve. In the event that this application is included in a community priority evaluation, it will be scored based on the community identified in response to this question. <u>The name of the community does not have to be formally adopted for the application to be designated as community-based.</u></p>	Y	<p>Descriptions should include:</p> <ul style="list-style-type: none"> <li>• How the community is delineated from Internet users generally. Such descriptions may include, but are not limited to, the following: membership, registration, or licensing processes, operation in a particular industry, use of a language.</li> <li>• How the community is structured and organized. For a community consisting of an alliance of groups, details about the constituent parts are required.</li> <li>• When the community was established, including the date(s) of formal organization, if any, as well as a description of community activities to date.</li> <li>• The current estimated size of the community, both as to membership and geographic extent.</li> </ul>		<p>Responses to Question 20 will be regarded as firm commitments to the specified community and reflected in the Registry Agreement, provided the application is successful.</p> <p>Responses are not scored in the Initial Evaluation. Responses may be scored in a community priority evaluation, if applicable. Criteria and scoring methodology for the community priority evaluation are described in Module 4 of the Applicant Guidebook.</p>	

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		(b) Explain the applicant's relationship to the community identified in 20(a).	Y	Explanations should clearly state: <ul style="list-style-type: none"> <li>• Relations to any community organizations.</li> <li>• Relations to the community and its constituent parts/groups.</li> <li>• Accountability mechanisms of the applicant to the community.</li> </ul>			
		(c) Provide a description of the community-based purpose of the applied-for gTLD.	Y	Descriptions should include: <ul style="list-style-type: none"> <li>• Intended registrants in the TLD.</li> <li>• Intended end-users of the TLD.</li> <li>• Related activities the applicant has carried out or intends to carry out in service of this purpose.</li> <li>• Explanation of how the purpose is of a lasting nature.</li> </ul>			
		(d) Explain the relationship between the applied-for gTLD string and the community identified in 20(a).	Y	Explanations should clearly state: <ul style="list-style-type: none"> <li>• relationship to the established name, if any, of the community.</li> <li>• relationship to the identification of community members.</li> <li>• any connotations the string may have beyond the community.</li> </ul>			
		(e) Provide a complete description of the applicant's intended registration policies in support of the community-based purpose of the applied-for gTLD. Policies and enforcement mechanisms are expected to constitute a coherent set.	Y	Descriptions should include proposed policies, if any, on the following: <ul style="list-style-type: none"> <li>• Eligibility: who is eligible to register a second-level name in the gTLD, and how will eligibility be determined.</li> <li>• Name selection: what types of second-level names may be registered in the gTLD.</li> <li>• Content/Use: what restrictions, if any, the registry operator will impose on how a registrant may use its registered name.</li> <li>• Enforcement: what investigation practices and mechanisms exist to enforce the policies above, what resources are allocated for enforcement, and what appeal mechanisms are available to registrants.</li> </ul>			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		(f) Attach any written endorsements for the application from <u>established</u> institutions/ <del>groups</del> representative of the community identified in 20(a). An applicant may submit <u>written</u> endorsements by multiple institutions/ <del>groups</del> , if relevant to the community.	Y	<p><u>At least one such endorsement is required for a complete application. The form and content of the endorsement are at the discretion of the party providing the endorsement; however, the letter must include an express statement support for the application as submitted and the contact information of the entity providing the endorsement.</u></p> <p>Endorsements from institutions/<del>groups</del> not mentioned in the response to 20(b) should be accompanied by a clear description of each such institution's/<del>group's</del> relationship to the community.</p>			
Geographic_Names	21	(a) Is the application for a geographic name?	Y	<p>An applied-for gTLD string is considered a geographic name requiring government support if it is: (a) the capital city name of a country or territory listed in the ISO 3166-1 standard; (b) a city name, where it is clear from statements in the application that the applicant intends to use the gTLD for purposes associated with the city name; (c) a sub-national place name listed in the ISO 3166-2 standard; or (d) a name listed as a UNESCO region or appearing on the "Composition of macro geographic (continental) or regions, geographic sub-regions, and selected economic and other groupings" list. See Module 2 for complete definitions and criteria.</p> <p>An application for a country or territory name, as defined in the Applicant Guidebook, will not be approved.</p>			
		(b) If a geographic name, attach documentation of support or non-objection from all relevant governments or public authorities.	N	See the documentation requirements in Module 2 of the Applicant Guidebook.			
Protection of Geographic Names	22	Describe proposed measures for protection of geographic names at the second and other levels in the applied-for gTLD. This should include any applicable rules and procedures for reservation and/or release of such names.	Y	<p>Applicants should consider and describe how they will incorporate Governmental Advisory Committee (GAC) advice in their management of second-level domain name registrations. See "Principles regarding New gTLDs" at <a href="http://gac.icann.org/gac-documents">http://gac.icann.org/gac-documents</a><del>http://gac.icann.org/testing-gac.</del></p> <p>For reference, applicants may draw on existing methodology developed for the</p>			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
				<p>reservation and release of country names in the .INFO top-level domain. <a href="http://gac.icann.org/system/files/dotinfocircular_0.pdf">See http://gac.icann.org/system/files/dotinfocircular_0.pdf</a>.</p> <p>Proposed measures will be posted for public comment as part of the application.</p>			
Registry Services	23	<p>Provide name and full description of all the Registry Services to be provided. Descriptions should include both technical and business components of each proposed service, and address any potential security or stability concerns.</p> <p>The following registry services are customary services offered by a registry operator:</p> <ul style="list-style-type: none"> <li>A. Receipt of data from registrars concerning registration of domain names and name servers.</li> <li>B. Dissemination of TLD zone files.</li> <li>C. Dissemination of contact or other information concerning domain name registrations (Whois service).</li> <li>D. Internationalized Domain Names, where offered.</li> <li>E. DNS Security Extensions (DNSSEC).</li> </ul> <p>The applicant must describe whether any of these registry services are intended to be offered in a manner unique to the TLD.</p> <p>Additional proposed registry services that are unique to the registry must also be described.</p>	Y	<p>Registry Services are defined as the following: (1) operations of the Registry critical to the following tasks: (i) the receipt of data from registrars concerning registrations of domain names and name servers; (ii) provision to registrars of status information relating to the zone servers for the TLD; (iii) dissemination of TLD zone files; (iv) operation of the Registry zone servers; and (v) dissemination of contact and other information concerning domain name server registrations in the TLD as required by the Registry Agreement; and (2) other products or services that the Registry Operator is required to provide because of the establishment of a Consensus Policy; (3) any other products or services that only a Registry Operator is capable of providing, by reason of its designation as the Registry Operator. A full definition of Registry Services can be found at <a href="http://www.icann.org/en/registries/rsep/rsep.html">http://www.icann.org/en/registries/rsep/rsep.html</a>.</p> <p>Security: For purposes of this Applicant Guidebook, an effect on security by the proposed Registry Service means (1) the unauthorized disclosure, alteration, insertion or destruction of Registry Data, or (2) the unauthorized access to or disclosure of information or resources on the Internet by systems operating in accordance with applicable standards.</p> <p>Stability: For purposes of this Applicant Guidebook, an effect on stability shall mean that the proposed Registry Service (1) is not compliant with applicable relevant standards that are authoritative and published by a well-established, recognized and authoritative standards body, such as relevant Standards-Track or Best Current</p>		<p>Responses are not scored. A preliminary assessment will be made to determine if there are potential security or stability issues with any of the applicant's proposed Registry Services. If any such issues are identified, the application will be referred for an extended review. See the description of the Registry Services review process in Module 2 of the Applicant Guidebook. Any information contained in the application may be considered as part of the Registry Services review. If its application is approved, applicant may engage in only those registry services defined in the application, unless a new request is submitted to ICANN in accordance with the Registry Agreement.</p>	

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
				<p>Practice RFCs sponsored by the IETF, or (2) creates a condition that adversely affects the throughput, response time, consistency or coherence of responses to Internet servers or end systems, operating in accordance with applicable relevant standards that are authoritative and published by a well-established, recognized and authoritative standards body, such as relevant Standards-Track or Best Current Practice RFCs and relying on Registry Operator's delegation information or provisioning.</p>			
<p>Demonstration of Technical &amp; Operational Capability (External)</p>	<p>24</p>	<p><u>Shared Registration System (SRS)</u> Performance: describe</p> <ul style="list-style-type: none"> <li>-the plan for operation of a robust and reliable <u>SRS</u> Shared Registration System. SRS is a critical registry function for enabling multiple registrars to provide domain name registration services in the TLD. <u>SRS must include the EPP interface to the registry, as well as any other interfaces intended to be provided, if they are critical to the functioning of the registry</u> Please refer to the requirements in <u>the Registry Interoperability, Continuity, and Performance Specification (Specification 6) (section 1.2) and Specification 10 (SLA Matrix)</u> attached to the Registry Agreement; <u>and</u></li> <li><u>Describe</u> resourcing plans <u>for the initial implementation of, and ongoing maintenance for, this aspect of the criteria</u> (number and description of personnel roles allocated to this area).</li> </ul> <p><u>A complete answer should include, but is not limited to:</u></p>	<p>Y</p>	<p>The questions in this section (24-44) are intended to give applicants an opportunity to demonstrate their technical and operational capabilities to run a registry. In the event that an applicant chooses to outsource one or more parts of its registry operations, the applicant should still provide the full details of the technical arrangements.</p> <p><u>Note that the resource plans provided in this section assist in validating the technical and operational plans as well as informing the cost estimates in the Financial section below.</u></p> <p>Questions <u>24-2930(a)</u> are designed to provide a description of the applicant's intended technical and operational approach for those registry functions that are outward-facing, i.e., interactions with registrars, registrants, and various DNS users. Responses to these questions will be published to allow review by affected parties.</p>	<p>0-1</p>	<p>Complete answer demonstrates:</p> <p>(1) a robust plan for operating a reliable SRS, <u>one of the five critical registry functions</u>;</p> <p>(2) scalability and performance are consistent with the overall business approach, and planned size of the registry;</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section; and</p> <p>(4) evidence of compliance with Specification 6 <u>(section 1.2)</u> to the Registry Agreement.</p>	<p><b>1 - meets requirements:</b> Response includes</p> <p>(1) <u>An adequate description of SRS that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</u></p> <p>(2) <u>Details of a well-developed and detailed</u> plan to operate a robust and reliable SRS;</p> <p>(3) SRS plans are sufficient to result in compliance with <u>the Registry Continuity, Interoperability, and Performance Specifications Specification 6 and Specification 10 to the Registry Agreement;</u></p> <p>(4) <u>SRS is commensurate with the technical, operational and financial approach described in the application. Full interplay and consistency of technical and business requirements;</u> and</p> <p>(5) <u>Demonstrates that adequate</u> technical resources are already on hand, or committed or readily available <u>to carry out this function.</u></p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<ul style="list-style-type: none"> <li>• <u>A high-level SRS system description;</u></li> <li>• <u>Representative network diagram(s);</u></li> <li>• <u>Number of servers;</u></li> <li>• <u>Description of interconnectivity with other registry systems;</u></li> <li>• <u>Frequency of synchronization between servers; and</u></li> <li>• <u>Synchronization scheme (e.g., hot standby, cold standby).</u></li> </ul> <p><u>A complete answer is expected to be approximately 2-5 pages.</u></p>					<p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1.</p>
	25	<p><u>Extensible Provisioning Protocol (EPP):</u> provide a detailed description of the interface with registrars, including how the applicant will comply with <u>EPPxtensible Provisioning Protocol in the relevant RFCs, including but not limited to: RFCs 3735 (if applicable), and 5730-5734.</u></p> <p><u>If intending to provide proprietary EPP extensions, provide documentation consistent with RFC 3735, including the EPP templates and schemas that will be used.</u></p> <p>Describe resourcing plans (number and description of personnel roles allocated to this area).</p> <p><u>A complete answer is expected to be approximately 2 to 5 pages. If there are proprietary EPP extensions, a complete answer is also expected to be 2 to 5 pages per EPP extension.</u></p>	Y		0-1	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of this aspect of registry technical requirements;</p> <p>(2) a technical plan scope/scale consistent with the overall business approach and planned size of the registry; and</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section;</p> <p><u>(4) ability to comply with relevant RFCs;</u></p> <p><u>(5) if applicable, a well-documented implementation of any proprietary EPP extensions; and</u></p> <p><u>(6) if applicable, how proprietary EPP extensions are consistent with the registration lifecycle as</u></p>	<p><b>1 - meets requirements:</b> Response includes</p> <p>(1) Adequate <u>description of EPP level of detail to that</u> substantially demonstrates <u>the applicant's</u> capability and knowledge required to meet this element;</p> <p>(2) <u>Sufficient evidence that any proprietary EPP extensionsEPP templates and schemas</u> are compliant with RFCs and provide all necessary functionalities for <u>the provision of registry services registrar interface;</u></p> <p>(3) <u>EPP interface is commensurate with the technical, operational, and financial approach as described in the applicationFull interplay and consistency of technical and business requirements;</u> and</p> <p>(4) Demonstrates that technical resources are already on hand, or committed or readily available.</p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
						described in Question 27.	
	26	<p>Whois: describe</p> <ul style="list-style-type: none"> <li>how the applicant will comply with ICANN's Registry Publicly Available Registration Data (Whois) specifications for data objects, bulk access, and lookups as defined in Specifications 4 and 106 to the Registry Agreement;</li> <li>Describe how the Applicant's Registry Publicly Available Registration Data (Whois) service will comply with RFC 3912; and</li> <li>Describe resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul> <p>A complete answer should include, but is not limited to:</p> <ul style="list-style-type: none"> <li>A high-level Whois system description;</li> <li>Relevant network diagram(s);</li> <li>Number of servers;</li> <li>Description of interconnectivity with other registry systems; and</li> <li>Frequency of synchronization between</li> </ul>	Y	<p>Note: A searchable Whois service as included in some current registry agreements (.ASIA, .MOBI, .POST) was previously included as a requirement in Specification 4 of the draft registry agreement, for community discussion. As an alternative to a uniform requirement, a searchable Whois service has been included provisionally here as an optional service, for which an applicant could receive a higher score. Additional community input is sought on this option, which may provide an additional tool to those involved in identifying and confronting malicious conduct in the namespace, providing that the methods and standards used to perform searches have a control structure designed to reduce the malicious use of the searching capability itself. As a point of reference, .NAME (<a href="http://www.icann.org/en/lds/agreements/name/appendix-05-15aug07.htm">http://www.icann.org/en/lds/agreements/name/appendix-05-15aug07.htm</a>) has had an "extensive WHOIS" searching function</p>	0-2	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> <li>complete knowledge and understanding of this aspect of registry technical requirements, (one of the five critical registry functions);</li> <li>a technical plan scope/scale consistent with the overall business approach and planned size of the registry; and</li> <li>a technical plan that is adequately resourced in the planned costs detailed in the financial section;</li> <li>ability to comply with relevant RFCs;</li> <li>evidence of compliance with Specifications 4 and 10 to the Registry Agreement; and</li> <li>if applicable, a well-documented implementation of Searchable Whois.</li> </ol>	<p>2 – exceeds requirements: Response meets all the attributes for a score of 1 and includes</p> <ol style="list-style-type: none"> <li>highly developed and detailed plans to ensure compliance with protocols and required performance specifications;</li> <li>full interplay and consistency of technical and business requirements; evidence of technical resources already on hand or fully committed; and</li> </ol> <p>(1) A Searchable Whois service: Whois service includes web-based search capabilities by domain name, registrant name, postal address, contact names, registrar IDs, and Internet Protocol addresses without arbitrary limit. Boolean search capabilities may be offered. The service shall include appropriate precautions to avoid abuse of this feature (e.g., provisions to ensure that limiting access is limited to legitimate authorized users), and is in compliance with any applicable privacy laws or policies.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p><u>servers.</u></p> <p><u>To be eligible for a score of 2, answers must also include:</u></p> <ul style="list-style-type: none"> <li>• <u>Provision for Searchable Whois capabilities; and</u></li> <li>• <u>A description of potential forms of abuse of this feature, how these risks will be mitigated, and the basis for these descriptions.</u></li> </ul> <p><u>A complete answer is expected to be approximately 2 to 5 pages.</u></p>		<p><del>available since its inception. The searching function is based on a tiered access model that helps reduce the potential malicious use of the function. Comment is invited in particular on how this type of service could help address certain types of malicious conduct, and on alternate solutions whereby use of Whois data for registered names can be an effective tool in the context of mitigating malicious conduct in new gTLDs. If the provision is supported, suggestions on development of a uniform technical specification for a search function are also sought.</del></p> <p><u>The Registry Agreement (Specification 4) requires provision of Whois lookup services for all names registered in the TLD. This is a minimum requirement. Provision for Searchable Whois as defined in the scoring column is a requirement for achieving a score of 2 points.</u></p>			<p><b>1 - meets requirements:</b> Response includes</p> <ol style="list-style-type: none"> <li>(1) adequate <u>description of Whois service that level of detail to substantially demonstrates the applicant's</u> capability and knowledge required to meet this element;</li> <li>(2) <u>Evidence that</u> Whois services <u>are</u> compliant with RFCs, <u>Specifications 4 and 10 to the Registry Agreement,</u> and <u>any other</u> contractual requirements <u>including and provide</u> all necessary functionalities for user interface;</li> <li>(3) Whois capabilities commensurate with the <u>technical, operational, and financial</u><del>overall business</del> approach as described <del>in the application;</del> and</li> <li>(4) demonstrates <u>an adequate level of resources</u> <del>that technical resources required to carry through the plans for this element</del> are already on hand or readily available <u>to carry out this function.</u></li> </ol> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	27	<p>Registration Life Cycle: provide a detailed description of the proposed registration lifecycle for domain names in the proposed gTLD. The description must:</p> <ul style="list-style-type: none"> <li>• explain the various registration states as well as the criteria and procedures that are used to change state;</li> <li>• <del>It must</del> describe the typical registration lifecycle of create/update/delete and all intervening steps such as pending, locked, expired, and transferred that may apply;</li> <li>• <u>clearly explain</u> Any time elements that are involved - for instance details of add-grace or redemption grace periods, or notice periods for renewals or transfers; <u>and must also be clearly explained</u></li> <li>• describe resourcing plans <u>for the implementation of, and ongoing maintenance for, this aspect of the criteria</u> (number and description of personnel roles allocated to this area).</li> </ul> <p><u>The description of the registration lifecycle should be supplemented by the inclusion of a state diagram, which captures definitions, explanations of trigger points, and transitions from state to state.</u></p> <p><u>If applicable, provide definitions for aspects of the registration lifecycle that are not covered by standard EPP RFCs.</u></p> <p><u>A complete answer is expected to be approximately 3 to 5 pages.</u></p>	Y		0-1	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of registration lifecycles and states; <del>and</del></p> <p>(2) consistency with any specific commitments made to registrants as adapted to the overall business approach for the proposed gTLD; <u>and</u></p> <p><u>(3) the ability to comply with relevant RFCs.</u></p>	<p><b>1 - meets requirements:</b> Response includes</p> <ol style="list-style-type: none"> <li>(1) <u>An adequate description of the registration lifecycle that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</u></li> <li>(2) <u>Details of a fully Evidence of highly developed registration life cycle with definition of various registration states, and transition between the states, and trigger points;</u></li> <li>(3) <u>Consistency of A registration lifecycle that is consistent with any commitments to registrants and with technical, operational, and financial plans described in the application; and</u></li> <li>(4) Demonstrates <u>an adequate level of that technical resources required to carry through the plans for this element that are already on hand or committed or readily available to carry out this function.</u></li> </ol> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	28	<p>Abuse Prevention and Mitigation: Applicants should describe the proposed policies and procedures to minimize abusive registrations and other activities that have a negative impact on Internet users. <u>A complete Answers should include, but is not limited to:</u></p> <ul style="list-style-type: none"> <li>• <del>Safeguards the applicant will implement at the time of registration, policies to reduce opportunities for abusive behaviors using registered domain names in the TLD, and policies for handling complaints regarding abuse. Each registry operator will be required</del> <u>An implementation plan</u> to establish and publish on its website a single abuse point of contact responsible for addressing matters requiring expedited attention and providing a timely response to abuse complaints concerning all names registered in the TLD through all registrars of record, including those involving a reseller;</li> <li>• <u>Policies for handling complaints regarding abuse;</u></li> <li>• <u>A description of rapid takedown or suspension systems that will be implemented.</u> Proposed measures for management and removal of orphan glue records for names removed from the zone; <u>and</u></li> <li>• <u>Resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria</u> (number and <del>description of</del> <u>description of</u> personnel roles allocated to this area).</li> </ul> <p><u>To be eligible for a score of 2, answers must include measures to promote Whois accuracy as well as measures from one other area as described below.</u></p> <ul style="list-style-type: none"> <li>• <u>Measures to promote Whois accuracy (can be undertaken by the registry directly or by registrars via requirements in the Registry-Registrar Agreement (RRA)) may include, but are not limited to:</u> <ul style="list-style-type: none"> <li>○ <u>Authentication of registrant information as complete and accurate at time of registration.</u> <u>Measures to accomplish this</u></li> </ul> </li> </ul>	Y		0- <del>2</del> <u>1</u>	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> <li>(1) Comprehensive abuse policies, <u>which include clear definitions of what constitutes abuse in the TLD,</u> and procedures that will effectively minimize potential for abuse in the TLD;</li> <li>(2) Plans are adequately resourced in the planned costs detailed in the financial section;</li> <li>(3) Policies and procedures identify and address the abusive use of registered names at startup and on an ongoing basis; and</li> <li>(4) When executed in accordance with the Registry Agreement, plans will result in compliance with contractual requirements.</li> </ol>	<p><u>2 – exceeds requirements: Response meets all the attributes for a score of 1 and includes:</u></p> <ol style="list-style-type: none"> <li>(1) <u>Details of measures to promote Whois accuracy, using measures specified here or other measures commensurate in their effectiveness; and</u></li> <li>(2) <u>Measures from at least one additional area to be eligible for 2 points as described in the question.</u></li> </ol> <p><b>1 - meets requirements</b> Response includes:</p> <ol style="list-style-type: none"> <li>(1) <u>An adequate description of abuse prevention and mitigation policies and procedures that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</u></li> <li>(2) <u>Details of <del>Evidence of highly well-</del> developed abuse policies and procedures;</u></li> <li>(3) Plans are sufficient to result in compliance with contractual requirements;</li> <li>(4) Plans are consistent <del>with overall business</del> <u>with the technical, operational, and financial</u> approach <u>described in the application,</u> and any commitments made to registrants; and</li> <li>(5) <u>Demonstrates an adequate level of resources that are on hand, committed, or readily available to carry out this function.</u></li> </ol> <p><b>0 – fails requirements</b></p> <p>Does not meet all the requirements to score 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p><u>could include performing background checks, verifying all contact information of principals mentioned in registration data, reviewing proof of establishment documentation, and other means.</u></p> <ul style="list-style-type: none"> <li><u>o Regular monitoring of registration data for accuracy and completeness, employing authentication methods, and establishing policies and procedures to address domain names with inaccurate or incomplete Whois data; and</u></li> <li><u>o If relying on registrars to enforce measures, establishing policies and procedures to ensure compliance, which may include audits, financial incentives, penalties, or other means. Note that the requirements of the RAA will continue to apply to all ICANN-accredited registrars.</u></li> <li><u>• A description of policies and procedures that define malicious or abusive behavior, capture metrics, and establish Service Level Requirements for resolution, including service levels for responding to law enforcement requests. This may include rapid takedown or suspension systems and sharing information regarding malicious or abusive behavior with industry partners;</u></li> <li><u>• Adequate controls to ensure proper access to domain functions (can be undertaken by the registry directly or by registrars via requirements in the Registry-Registrar Agreement (RRA)) may include, but are not limited to:</u> <ul style="list-style-type: none"> <li><u>o Requiring multi-factor authentication (i.e., strong passwords, tokens, one-time passwords) from registrants to process update, transfers, and deletion requests;</u></li> <li><u>o Requiring multiple, unique points of contact to request and/or approve update, transfer, and deletion requests; and</u></li> </ul> </li> </ul>					

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p><u>o Requiring the notification of multiple, unique points of contact when a domain has been updated, transferred, or deleted.</u></p> <p><u>A complete answer is expected to be approximately 10 to 20 pages.</u></p>					
	29	<p>Rights Protection Mechanisms: Applicants <del>must</del> describe how their proposal will comply with policies and practices that minimize abusive registrations and other activities that affect the legal rights of others, <u>such as the Uniform Domain Name Dispute Resolution Policy (UDRP), Uniform Rapid Suspension (URS) system, and Trademark Claims and Sunrise services at startup.</u></p> <p><u>A complete answer should include:</u></p> <p><del>(a) Describe</del> <u>A description of</u> how the registry operator will implement safeguards against allowing unqualified registrations, and reduce opportunities for behaviors such as phishing or pharming. At a minimum, the registry operator must offer <del>either</del> a Sunrise period <del>or</del> <u>and</u> a Trademark Claims service <u>during the required time periods</u>, and implement decisions rendered under the URS <u>on an ongoing basis</u>; and:</p> <p><u>Answers may also include additional measures such as abusive use policies, takedown</u></p>	Y		0-2	<p>Complete answer describes mechanisms designed to:</p> <p>(1) prevent abusive registrations, and                  (2) identify &amp; address the abusive use of registered names on an ongoing basis.</p>	<p><b>2 - exceeds requirements:</b> <u>Response meets all attributes for a score of 1 and includes:</u></p> <p>(1) <u>Provides a</u> coherent, well-developed plan for rights protection; <u>and</u>                  (2) Mechanisms <u>for</u> providing effective protections <u>that at least meeting exceed</u> minimum requirements, <u>and may include other protections, beyond the start-up period;</u></p> <p><b>1 - meets requirements:</b> <u>Response includes</u></p> <p>(1) <u>An adequate description of RPMs that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</u>                  (2) <u>A commitment from the applicant to implement</u> Proposed registry operator <u>commits to and describes</u> protection of rights mechanisms sufficient to comply with minimum requirements;                  (3) <del>(2) These mechanisms provide protections at least at registry start-up, and may include other protections beyond the start-up period</del> <u>Plans that are sufficient to result in compliance with</u></p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p><del>procedures, registrant pre-verification, or authentication procedures, or other covenants.</del></p> <ul style="list-style-type: none"> <li><del>A description of Describe resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</del></li> </ul> <p><del>To be eligible for a score of 2, answers must also include additional measures specific to rights protection, such as abusive use policies, takedown procedures, registrant pre-verification, or authentication procedures, or other covenants.</del></p> <p><del>A complete answer is expected to be approximately 1 to 10 pages.</del></p>					<p><del>contractual requirements:</del></p> <p><del>(4) Mechanisms that are commensurate with the technical, operational, and financial approach described in the application; and</del></p> <p><del>(5) Demonstrates an adequate level of resources that are on hand, committed, or readily available to carry out this function.</del></p> <p><del>0 - fails requirements:</del> Does not meet all the requirements to score a 1.</p>
	30	<p><u>(a) Security Policy: provide a summary of the security policy and procedures for the proposed registry, including but not limited to:</u></p> <ul style="list-style-type: none"> <li><u>indication of any independent assessment reports demonstrating security capabilities, and provisions for periodic independent assessment reports to test security capabilities;</u></li> <li><u>description of any augmented security levels or capabilities commensurate with the nature of the applied for gTLD string, including the identification of any existing international or industry relevant security standards the applicant commits to following (reference site must be provided);</u></li> <li><u>list of commitments made to registrants concerning security levels.</u></li> </ul> <p><u>To be eligible for a score of 2, answers must also include:</u></p> <p><u>Details of a security policy that includes, but is not limited to:</u></p> <ul style="list-style-type: none"> <li><u>Evidence of an independent assessment report demonstrating effective security controls (e.g., ISO 27001).</u></li> </ul> <p><u>A summary of the above should be no more than 10</u></p>	Y	<p>Criterion 5 calls for security levels to be appropriate for the use and level of trust associated with the TLD string, such as, for example, financial services oriented TLDs. "Financial services" are activities performed by financial institutions, including: 1) the acceptance of deposits and other repayable funds; 2) lending; 3) payment and remittance services; 4) insurance or reinsurance services; 5) brokerage services; 6) investment services and activities; 7) financial leasing; 8) issuance of guarantees and commitments; 9) provision of financial advice; 10) portfolio management and advice; or 11) acting as a financial clearinghouse. <u>Financial services is used as an example only; other strings with exceptional potential to cause harm to consumers would also be expected to deploy appropriate levels of security.</u></p>	0-2	<p>Complete answer demonstrates:</p> <p>(1) detailed description of processes and solutions deployed to manage logical security across infrastructure and systems, monitoring and detecting threats and security vulnerabilities and taking appropriate steps to resolve them;</p> <p>(2) security capabilities are consistent with the overall business approach and planned size of the registry;</p> <p>(3) a technical plan adequately resourced in the planned costs detailed in the financial section;</p> <p>(4) security measures are consistent with any commitments made to registrants regarding security levels; and</p> <p>(5) security measures are appropriate for the applied-for gTLD string (For example, applications for strings with unique trust implications, such as financial services-oriented strings, would be expected to</p>	<p><u>2 - exceeds requirements:</u> Response <u>meets all attributes for a score of 1 and includes</u></p> <p>(1) Evidence of highly developed and detailed security capabilities, with various baseline security levels, independent benchmarking of security metrics, robust periodic security monitoring, and continuous enforcement; <u>and</u></p> <p><u>(2) an independent assessment report is provided demonstrating effective security controls are either in place or have been designed, and are commensurate with the applied-for gTLD string.</u> (This could be ISO 27001 certification or other well-established and recognized industry certifications for the registry operation. If new independent standards for demonstration of effective security controls are established, such as the High Security Top Level Domain (HSTLD) designation, this could also be included.)</p> <p><u>1 - meets requirements:</u> Response includes:</p> <p>(1) <u>Adequate level of detail description of Security to that</u> substantially demonstrates <u>the applicant's</u> capability and knowledge required</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<u>to 20 pages. Note that the complete security policy for the registry, without procedures, is required to be submitted with the application.</u>				provide a commensurate level of security).	to meet this element; (2) <del>Evidence-A</del> <u>description</u> of adequate security capabilities, <u>including</u> enforcement of logical access control, threat analysis, incident response and auditing. Ad-hoc oversight and governance and leading practices being followed; (3) Security capabilities aligned with the technical, operational, and financial approach as described in the application, and any commitments made to registrants; (4) Demonstrates that <u>an adequate level of technical</u> resources <u>required to carry through the plans for this element</u> are <u>on hand, committed or readily available to carry out this function; and</u> (5) Proposed security measures are commensurate with the nature of the applied-for gTLD string. <b>0 - fails requirements:</b> Does not meet all the requirements to score 1.
Demonstration of Technical & Operational Capability (Internal)	30	<u>(b) Security Policy: provide the complete security policy and procedures for the proposed registry, including but not limited to:</u> <ul style="list-style-type: none"> <li>• system (data, server, application / services) and network access control, ensuring systems are maintained in a secure fashion, including details of how they are monitored, logged and backed up;</li> <li>• resources to secure integrity of updates between registry systems and nameservers, and between nameservers, if any;</li> <li>• independent assessment reports demonstrating security capabilities, if any;</li> <li>• provisioning and other measures that mitigate risks posed by denial of service attacks;</li> <li>• computer and network incident response policies, plans, and processes;</li> <li>• plans to minimize the risk of unauthorized access to its systems or tampering with registry data;</li> <li>• intrusion detection mechanisms, a threat analysis for the proposed registry, the</li> </ul>	N	Questions 30 <b>(b)</b> – 44 are designed to provide a description of the applicant's intended technical and operational approach for those registry functions that are internal to the infrastructure and operations of the registry. To allow the applicant to provide full details and safeguard proprietary information, responses to these questions will not be published.	<del>0-2</del>		

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>defenses that will be deployed against those threats, and provision for periodic threat analysis updates;</p> <ul style="list-style-type: none"> <li>• details for auditing capability on all network access;</li> <li>• physical security approach;</li> <li>• identification of department or group responsible for the registry's security organization;</li> <li>• background checks conducted on security personnel;</li> <li>• <u>Answers should specify description of the main security threats to the registry operation that have been identified; and</u></li> <li>• <u>resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</u></li> </ul>					
	31	<p>Technical Overview of Proposed Registry: provide a technical overview of the proposed registry.</p> <p>The technical plan must be adequately resourced, with appropriate expertise and allocation of costs. The applicant will provide financial descriptions of resources in the next section and those resources must be reasonably related to these technical requirements.</p> <p>The overview should include information on the estimated scale of the registry's technical operation, for example, estimates for the number of registration transactions and DNS queries per month should be provided for the first two years of operation.</p> <p>In addition, the overview should account for geographic dispersion of incoming network traffic such as DNS, Whois, and registrar transactions. If the registry serves a highly localized registrant base, then traffic might be expected to come mainly from one area.</p> <p>This high-level summary should not repeat answers to questions below. <u>Answers should</u></p>	N		0-21	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of technical aspects of registry requirements;</p> <p>(2) an adequate level of resiliency for the registry's technical operations;</p> <p>(3) consistency with currently deployed technical/operational solutions;</p> <p>(4) consistency with the overall business approach and planned size of the registry;</p> <p><u>(5) adequate resourcing for technical plan in the planned costs detailed in the financial section; and</u></p> <p><u>(6) consistency with subsequent technical questions.</u></p>	<p><del>2—exceeds requirements:</del> Response includes</p> <p><del>(1) Highly developed technical plans;</del></p> <p><del>(2) Provision of a high level of availability;</del></p> <p><del>(3) Full interplay and consistency of technical and business requirements; and</del></p> <p><del>(4) Evidence of technical resources already on hand or fully committed.</del></p> <p><b>1 - meets requirements:</b> Response includes:</p> <p>(1) <u>An Adequate level of development description that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</u></p> <p>(2) Technical plans are commensurate with the <u>technical, operational, and financial overall business</u> approach as described in the application;</p> <p>(3) Demonstrates <del>that technical an</del> <u>adequate level of resources that are required to carry through the plans for this element are on hand, committed, or readily available to</u></p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p><u>include a visual diagram(s) to highlight dataflows, to provide context for the overall technical infrastructure. Detailed diagrams for subsequent questions should be able to map back to this high-level diagram(s). The visual diagram(s) can be supplemented with documentation, or a narrative, to explain how all of the Technical &amp; Operational components conform.</u></p> <p><u>A complete answer is expected to be approximately 5 to 10 pages.</u></p>					<p><u>carry out this function.</u></p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1.</p>
	32	<p>Architecture: provide documentation for the system and network architecture that will support registry operations for the proposed scale of the registry. System and network architecture documentation must clearly demonstrate the applicant's ability to operate, manage, and monitor registry systems. Documentation <del>should</del><u>may</u> include multiple diagrams or other components <del>including but not limited to</del><u>sufficient to describe:</u></p> <ul style="list-style-type: none"> <li>• <u>Detailed network diagram(s) showing the full interplay of registry elements, including but not limited to SRS, DNS, Whois, data escrow, and registry database functions;</u></li> <li>• Network and associated systems necessary to support registry operations, including: <ul style="list-style-type: none"> <li>☐ <u>Anticipated TCP / IP addressing scheme</u></li> <li>☐ <u>Hardware (i.e., servers, routers, networking components, virtual machines and key characteristics (CPU and RAM, Disk space, internal network connectivity, and make and model)); networking components, virtual machines)</u></li> <li>☐ <u>Operating system and versions, and</u></li> <li>☐ <u>Software and applications (with version information) necessary to support registry operations, management, and monitoring</u></li> </ul> </li> <li>• General overview of capacity planning, including bandwidth allocation plans;</li> <li>• List of providers / carriers; <u>and</u></li> <li>• <u>Resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria</u> (Number and description of personnel roles allocated to this area).</li> </ul> <p><u>To be eligible for a score of 2, answers must also include evidence of a network architecture design</u></p>	N		0-2	<p>Complete answer demonstrates:</p> <ul style="list-style-type: none"> <li>•(1) <u>detailed and coherent network architecture;</u></li> <li>•(2) <u>architecture providing resiliency for registry systems;</u></li> <li>•(3) <u>a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry; and</u></li> <li>•(4) <u>a technical plan that is adequately resourced in the planned costs detailed in the financial section.</u></li> </ul>	<p><b>2 - exceeds requirements:</b> Response <u>meets all attributes for a score of 1 and</u> includes</p> <ol style="list-style-type: none"> <li>(1) Evidence of highly developed and detailed network architecture <u>that is able to scale well above stated projections for high registration volumes, thereby significantly reducing the risk from unexpected volume surges and demonstrates an ability to adapt quickly to support new technologies and services that are not necessarily envisaged for initial registry startup; and</u></li> <li>(2) Evidence of a highly available, robust, and secure infrastructure;</li> <li><del>(3) Network architecture shows full interplay and consistency of technical and business requirements; and</del></li> <li><del>(4) Evidence of technical resources already on hand or fully committed.</del></li> </ol> <p><b>1 - meets requirements:</b> Response includes</p> <ol style="list-style-type: none"> <li>(1) <u>An adequate description of the architecture that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</u></li> <li>(2) Plans for network architecture describe all necessary elements;</li> <li>(3) Descriptions demonstrate adequate network architecture providing robustness and security of the registry;</li> <li>(4) Bandwidth and SLA are commensurate with <u>the technical, operational, and financial overall business</u> approach as described in</li> </ol>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p><u>that greatly reduces the risk profile of the proposed registry by providing a level of scalability and adaptability (e.g., protection against DDoS attacks) that far exceeds the minimum configuration necessary for the expected volume.</u></p> <p><u>A complete answer is expected to be approximately 5 to 10 pages.</u></p>					<p>the application; and</p> <p>(5) Demonstrates <u>an adequate level of that technical resources that are on hand, or committed or readily available to carry out this function. required to carry through the plans for this element are readily available.</u></p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1.</p>
	33	<p>Database Capabilities: provide details of database capabilities including <u>but not limited to:</u></p> <ul style="list-style-type: none"> <li>• database software,</li> <li>• storage capacity (both in raw terms [e.g., MB, GB] and in number of registrations / registration transactions),</li> <li>• maximum transaction throughput (in total and by type of transaction),</li> <li>• scalability,</li> <li>• procedures for object creation, editing, and deletion, <u>and user and credential management,</u></li> <li>• high availability,</li> <li>• change <u>management</u></li> </ul> <p><del>procedures; notifications;</del></p> <ul style="list-style-type: none"> <li>• <del>registrar transfer procedures,</del></li> <li>• <del>grace period implementation,</del></li> <li>• reporting capabilities, and</li> <li>• <del>resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria</del> (number and description of personnel roles allocated to this area).</li> </ul> <p><u>A registry database data model can be included to provide additional clarity to this response.</u></p> <p><u>Note: Database capabilities described should be in reference to registry services and not necessarily related support functions such as Personnel or Accounting, unless such services are inherently intertwined with the delivery of registry services.</u></p> <p><u>To be eligible for a score of 2, answers must also include evidence of database capabilities that greatly reduce the risk profile of the proposed registry by providing a level of scalability and</u></p>	N		0-2	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of database capabilities to meet the registry technical requirements;</p> <p>(2) database capabilities consistent with the overall business approach, and planned size of the registry; and</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section.</p>	<p><b>2 - exceeds requirements:</b> Response <u>meets all attributes for a score of 1 and includes</u></p> <p>(1) Highly developed and detailed description of database capabilities <u>that are able to scale well above stated projections for high registration volumes, thereby significantly reducing the risk from unexpected volume surges and demonstrates an ability to adapt quickly to support new technologies and services that are not necessarily envisaged for registry startup; and</u></p> <p>(2) Evidence of comprehensive database capabilities, including high scalability and redundant database infrastructure, regularly reviewed operational and reporting procedures following leading practices.</p> <p><del>(3) Database capabilities show full interplay and consistency of technical and business requirements; and</del></p> <p><del>(4) Evidence of technical resources already on hand or fully committed.</del></p> <p><b>1 - meets requirements:</b> Response includes</p> <p>(1) <u>An adequate description of database capabilities that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</u></p> <p>(2) Plans for database capabilities describe all necessary elements;</p> <p>(3) Descriptions demonstrate adequate</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p><u>adaptability that far exceeds the minimum configuration necessary for the expected volume.</u></p> <p><u>A complete answer is expected to be approximately 3 to 5 pages.</u></p>					<p>database capabilities <del>(not leading practices)</del>, with database throughput, scalability, and database operations with limited operational governance;</p> <p>(4) Database capabilities are commensurate with <u>the technical, operational, and financial</u> <del>overall business</del> approach as described in the application; and</p> <p>(5) Demonstrates that <u>an adequate level of technical resources that are on hand, or committed or readily available to carry out this function, required to carry through the plans for this element are readily available.</u></p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1.</p>
	34	<p>Geographic Diversity: provide a description of plans for geographic diversity of:</p> <p>a. name servers, and b. <u>operations centers.</u></p> <p><u>Answers should include, but are not limited to:</u></p> <ul style="list-style-type: none"> <li><u>This should include</u> the intended physical locations of systems, primary and back-up operations centers (including security attributes), and other infrastructure;</li> <li><u>This may include any</u> registry plans to use Anycast or other <u>topological and geo-diversity</u> <del>geographical diversity</del> measures, <u>in which case, the configuration of the relevant service must be included;</u></li> <li><u>Describe</u> resourcing plans <u>for the initial implementation of, and ongoing maintenance for, this aspect of the criteria</u> (number and description of personnel roles allocated to this area).</li> </ul> <p><u>To be eligible for a score of 2, answers must also include evidence of a geographic diversity plan that greatly reduces the risk profile of the proposed registry by ensuring the continuance of all vital business functions (as identified in the applicant's continuity plan in Question 39) in the event of a</u></p>	N		0-2	<p>Complete answer demonstrates:</p> <p>(1) geographic diversity of nameservers and operations centers;</p> <p>(2) proposed geo-diversity measures are consistent with the overall business approach and planned size of the registry; and</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section.</p>	<p><b>2 - exceeds requirements:</b> Response <u>meets all attributes for a score of 1 and includes</u></p> <p>(1) Evidence of highly developed measures for geo-diversity of operations, with locations and functions <u>to continue all vital business functions in the event of a natural or other disaster at the principal place of business or point of presence; and</u></p> <p>(2) A high level of availability, security, and bandwidth;</p> <p><del>(3) Full interplay and consistency of technical and business requirements; and</del></p> <p><del>(4) Evidence of technical resources already on hand or committed.</del></p> <p><b>1 - meets requirements:</b> Response includes</p> <p>(1) <u>An adequate description of Geographic Diversity that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</u></p> <p>(2) <u>Description of geodiversity plans includes all necessary elements;</u> Plans provide adequate</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p><u>natural or other disaster) at the principal place of business or point of presence.</u></p> <p><u>A complete answer is expected to be approximately 3 to 5 pages.</u></p>					<p>geo-diversity of name servers and operations <u>to continue critical registry functions in the event of a temporary outage at the principal place of business or point of presence;</u></p> <p>(3) Geo-diversity plans are commensurate with <u>technical, operational, and financial</u> <del>overall business</del> approach as described in the application; and</p> <p>(4) Demonstrates <del>that technical resources</del> <u>adequate resources that are on hand, or committed or readily available to carry out this function, required to carry through the plans for this element are readily available.</u></p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1.</p>
	35	<p>DNS Service <del>Compliance:</del> describe the configuration and operation of nameservers, including how the applicant will comply with <u>relevant</u> RFCs.</p> <p>All name servers used for the new gTLD must be operated in compliance with the DNS protocol specifications defined in the relevant RFCs, including but not limited to: 1034, 1035, 1982, 2181, 2182, 2671, 3226, 3596, 3597, 3901, 4343, and 4472.</p> <p><u>Provide details of the intended DNS Service including, but not limited to:</u></p> <ul style="list-style-type: none"> <li><del>A description of</del> <u>Describe</u> the DNS services to be provided, <u>such as query rates to be supported at initial operation, and reserve capacity of the system. How will these be scaled as a function of growth in the TLD? Similarly, describe how services will scale for name server update method and performance.</u></li> <li><del>RFCs that will be followed – describe how services are compliant with RFCs and if these are dedicated or shared with any other functions (capacity/performance) or DNS zones, the resources used to implement</del></li> </ul>	N	<p>Note that the use of DNS wildcard resource records as described in RFC 4592 or any other method or technology for synthesizing DNS resource records or using redirection within the DNS by the registry is prohibited in the Registry Agreement.</p> <p>Also note that name servers for the new gTLD must comply with IANA Technical requirements for authoritative name servers: &lt;<a href="http://www.iana.org/procedures/nameserver-requirements.html">http://www.iana.org/procedures/nameserver-requirements.html</a>&gt;.</p>	0- <del>12</del>	<p>Complete answer demonstrates:</p> <p>(1) adequate description of configurations of nameservers and compliance with respective DNS protocol-related RFCs;</p> <p>(2) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry;</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section; <del>and</del></p> <p>(4) evidence of compliance with Specification 6 to the Registry <u>Agreement. Agreement; and</u></p> <p>(5) <u>evidence of complete knowledge and understanding of requirements for DNS service, one of the five critical registry functions.</u></p>	<p><del>2 - exceeds requirements:</del> Response includes:</p> <p>(1) <del>Highly developed and detailed plans to ensure compliance with DNS protocols and required performance specifications;</del></p> <p>(2) <del>A high level of availability;</del></p> <p>(3) <del>Full interplay and consistency of technical and business requirements; and</del></p> <p>(4) <del>Evidence of technical resources already on hand or committed.</del></p> <p><b>1 - meets requirements:</b> Response includes:</p> <p>(1) Adequate <u>description of DNS service that level of detail to that substantially demonstrates the applicant's</u> capability and knowledge required to meet this element;</p> <p>(2) Plans are sufficient to result in compliance with DNS protocols (<u>Specification 6, section 1.1</u>) and required performance specifications <u>Specification 10, Service Level Matrix; and</u></p> <p>(3) Plans are commensurate with</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>the services, and demonstrate how the system will function. Suggested information includes:</p> <ul style="list-style-type: none"> <li>• <u>Services</u>. Query rates to be supported at initial operation, and reserve capacity of the system. How will these be scaled as a function of growth in the TLD? Similarly, describe how services will scale for name server update method and performance.</li> <li>• <u>The resources used to implement the services</u> - Describe complete server hardware and software. Describe how services are compliant with RFCs. Are these dedicated or shared with any other functions (capacity/performance) or DNS zones? Describe including network bandwidth and addressing plans for servers. Also include Describe resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> <li>• <u>Demonstrate how the system will function</u> - describe how the proposed infrastructure will be able to deliver the performance described in the Performance Specification (Specification 106) (section 2) attached to the Registry Agreement.</li> </ul> <p>Examples of evidence include:</p> <ul style="list-style-type: none"> <li>• Server configuration standard (i.e., planned configuration).</li> <li>• Network addressing and bandwidth for query load and update propagation.</li> <li>• Headroom to meet surges.</li> </ul> <p><u>A complete answer is expected to be approximately 5 to 10 pages.</u></p>					<p><u>technical, operational, and financial overall business</u> approach as described in the application; and</p> <p>(4) Demonstrates <u>that an adequate level of technical resources that are on hand, or committed or readily available to carry out this function, required to carry through the plans for this element are readily available.</u></p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	36	<p>IPv6 Reachability: <u>provide a description of plans for providing IPv6 transport including, but not limited to:</u></p> <ul style="list-style-type: none"> <li><u>How</u> the registry <u>will</u> supports IPv6 access to Whois, Web-based Whois and any other Registration Data Publication Service as described in Specification 6 (section 1.5) to the Registry Agreement.</li> <li><u>How the registry will comply with the requirement in Specification 6 for having at least two nameservers reachable over IPv6.</u>  <del>DNS servers over IPv6 networks for at least 2 nameservers. IANA currently has a minimum set of technical requirements for IPv4 name service.</del></li> <li><del>These include two nameservers separated by geography and by network topology, each serving a consistent set of data, and are reachable from multiple locations across the globe. Describe how the registry will meet this same criterion for IPv6, requiring IPv6 transport to their network.</del></li> <li>List all services that will be provided over IPv6, and describe the IPv6 connectivity and provider diversity that will be used.</li> <li><u>Describe</u> <del>Resourcing</del> plans <u>for the initial implementation of, and ongoing maintenance for, this aspect of the criteria</u> (number and description of personnel roles allocated to this area).</li> </ul> <p><u>A complete answer is expected to be approximately 3 to 5 pages.</u></p>	N	IANA nameserver requirements are available at <a href="http://www.iana.org/procedures/nameserver-requirements.html">http://www.iana.org/procedures/nameserver-requirements.html</a> .	0-1	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of this aspect of registry technical requirements;</p> <p>(2) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry; <del>and</del></p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section; <del>and</del></p> <p><u>(4) evidence of compliance with Specification 6 to the Registry Agreement.</u></p>	<p><b>1 - meets requirements:</b> Response includes</p> <p>(1) Adequate <u>description of IPv6 level of detail to reachability that substantially demonstrates the applicant's</u> capability and knowledge required to meet this element;</p> <p><u>(2) A description of an Evidence of</u> adequate implementation plan addressing requirements for IPv6 reachability, indicating IPv6 reachability allowing IPv6 transport in the network <u>over two independent IPv6 capable networks</u> in compliance to IPv4 IANA specifications <del>with at least 2 separated nameservers;</del></p> <p><u>(3) IPv6 plans commensurate with the technical, operational, and financial overall business</u> approach as described in the application; and</p> <p>(4) Demonstrates <u>an adequate level of that technical</u> resources <u>that are required to carry through the plans for this element are already</u> on hand, <u>committed</u> or readily available <u>to carry out this function.</u></p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1.</p>
	37	<p>Data Backup Policies &amp; Procedures: provide</p> <ul style="list-style-type: none"> <li>details of frequency and procedures for backup of data,</li> <li>hardware, and systems used for backup,</li> <li>data format,</li> <li>data backup features,</li> <li>backup testing procedures,</li> <li>procedures for retrieval of data/rebuild of database,</li> <li>storage controls and procedures, and</li> <li><u>resourcing plans for the initial implementation of, and ongoing</u></li> </ul>	N		0- <del>1</del> 2	<p>Complete answer demonstrates:</p> <p>(1) detailed backup and retrieval processes deployed;</p> <p>(2) backup and retrieval process and frequency are consistent with the overall business approach and planned size of the registry; and</p> <p>(3) a technical plan that is adequately resourced in the</p>	<p><del>2 - exceeds requirements:</del> Response includes</p> <p><del>(1) Evidence of highly developed data backup policies and procedures, with continuous robust monitoring, continuous enforcement of backup security, regular review of backups, regular recovery testing, and recovery analysis. Leading practices being followed;</del></p> <p><del>(2) A high level of resiliency;</del></p> <p><del>(3) Full interplay and consistency of technical and business requirements;</del></p>

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		<p><del>maintenance for, this aspect of the criteria</del> (number and description of personnel roles allocated to this area).</p> <p><del>A complete answer is expected to be approximately 3 to 5 pages.</del></p>				<p>planned costs detailed in the financial section.</p>	<p><del>and</del></p> <p><del>(4) Evidence of technical resources already on hand or fully committed.</del></p> <p><del>1 - meets requirements:</del> Response includes</p> <p>(1) Adequate <del>description of</del> backup <del>policies and</del> procedures <del>that</del> <del>substantially demonstrate the applicant's capabilities and knowledge required to meet this element, recovery steps, and retrieval capabilities available;</del></p> <p>(2) <del>A description of Minimal</del> leading practices being <del>or to be</del> followed;</p> <p>(3) Backup procedures commensurate with the <del>technical, operational, and financial</del> overall business approach as described in the application; and</p> <p>(4) Demonstrates <del>that an adequate level of</del> technical resources <del>that are on hand, or committed or readily available to carry out this function required to carry through the plans for this element are readily available.</del></p> <p><del>0 - fails requirements:</del> Does not meet all the requirements to score a 1.</p>
	38	<p><u>Data</u> Escrow: describe</p> <ul style="list-style-type: none"> <li>• how the applicant will comply with the <u>data escrow requirements arrangements</u> documented in the Registry Data Escrow Specifications (Specification 2 of the Registry Agreement); <u>and</u></li> <li>• <u>Describe</u> resourcing plans <u>for the initial implementation of, and ongoing maintenance for, this aspect of the criteria</u> (number and description of personnel roles allocated to this area).</li> </ul> <p><u>A complete answer is expected to be approximately 3 to 5 pages</u></p>	N		0- <del>12</del>	<p>Complete answer demonstrates:</p> <p><u>(1) complete knowledge and understanding of data escrow, one of the five critical registry functions;</u></p> <p><del>(2)</del> compliance with Specification 2 of the Registry Agreement;</p> <p><del>(3)</del> a technical plan that is adequately resourced in the planned costs detailed in the financial section; and</p> <p><del>(4)</del> the escrow arrangement is consistent with the overall business approach and size/scope of the registry.</p>	<p><del>2 - exceeds requirements:</del> Response includes</p> <p><del>(1) Evidence of highly developed and detailed data escrow procedures</del></p> <p><del>(2) Procedures are in place to ensure compliance with Specification 2 of the Registry Agreement;</del></p> <p><del>(3) Full interplay of technical and business requirements; and</del></p> <p><del>(4) Evidence of technical resources already on hand or committed.</del></p> <p><del>1 - meets requirements:</del> Response includes</p> <p>(1) Adequate <u>description of a Data Escrow process</u> level of detail to <u>that</u> substantially demonstrates <u>the applicant's</u> capability and knowledge required to meet this element;</p> <p>(2) Data escrow plans are sufficient to result in compliance with the Data Escrow Specification (<u>Specification</u></p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
							<p><u>2 to the Registry Agreement</u>);</p> <p>(3) Escrow capabilities are commensurate with the <u>technical, operational, and financial</u> <del>overall</del> <u>business</u> approach as described in the application; and</p> <p>(4) Demonstrates <del>that an adequate level of technical</del> resources <u>that are on hand, committed, or required to carry through the plans for this element are</u> readily available <u>to carry out this function</u>.</p> <p><b>0 – fails requirements:</b> Does not meet all the requirements to score a 1.</p>
	39	<p>Registry Continuity: describe how the applicant will comply with registry continuity obligations as described <del>in the Registry Interoperability, Continuity and Performance Specification, attached to the draft Registry Agreement (Specification in Specification 6), (section 1.3) to the registry agreement</del>. This includes conducting registry operations using diverse, redundant servers to ensure continued operation of critical functions in the case of technical failure.</p> <p>Describe resourcing plans <u>for the initial implementation of, and ongoing maintenance for, this aspect of the criteria</u> (number and description of personnel roles allocated to this area).</p> <p><u>The response should include, but is not limited to, the following elements of the business continuity plan:</u></p> <ul style="list-style-type: none"> <li>• <u>Identification of risks and threats to compliance with registry continuity obligations;</u></li> <li>• <u>Identification and definitions of vital business functions (which may include registry services beyond the five critical registry functions) versus other registry functions and supporting operations and technology;</u></li> <li>• <u>Definitions of Recovery Point Objectives and Recovery Time Objective; and</u></li> <li>• <u>Descriptions of testing plans to promote compliance with relevant obligations.</u></li> </ul>	N	For reference, applicants should review the ICANN gTLD Registry Continuity Plan at <a href="http://www.icann.org/en/registries/continuity/gtld-registry-continuity-plan-25apr09-en.pdf">http://www.icann.org/en/registries/continuity/gtld-registry-continuity-plan-25apr09-en.pdf</a> .	0-2	<p>Complete answer demonstrates:</p> <p>(1) detailed description showing plans for compliance with registry continuity obligations;</p> <p>(2) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry; <del>and</del></p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section; <del>and</del> <u>(4) evidence of compliance with Specification 6 to the Registry Agreement.</u></p>	<p><b>2 - exceeds requirements:</b> Response <u>meets all attributes for a score of 1 and</u> includes</p> <p>(1) Highly developed and detailed processes for maintaining registry continuity; <del>and</del></p> <p>(2) <u>Evidence of concrete steps, such as a contract with a backup service provider or a maintained hot site.</u> <del>(2) A high level of availability;</del></p> <p><del>(3) Full interplay and consistency of technical and business requirements;</del> <del>and</del></p> <p><del>(4) Evidence of technical resources already on hand or committed.</del></p> <p><b>1 - meets requirements:</b> Response includes</p> <p>(1) Adequate <u>description of a Registry Continuity plan that level of detail to</u> substantially demonstrates <u>capability and knowledge required to meet this element;</u></p> <p>(2) Continuity plans are sufficient to result in compliance with requirements <u>(Specification 6);</u></p> <p>(3) Continuity plans are commensurate with <u>the technical, operational, and financial</u> <del>overall</del> <u>business</u> approach as described in the application; and</p> <p>(4) Demonstrates <u>an adequate level of that technical</u> resources <u>required to carry through the plans for this element that</u> are <u>on hand, committed</u> readily available <u>to carry</u></p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>To be eligible for a score of 2, answers must also include:</p> <ul style="list-style-type: none"> <li>A highly detailed plan that provides for leading practice levels of availability; and</li> <li>Evidence of concrete steps such as a contract with a backup provider (in addition to any currently designated service operator) or a maintained hot site.</li> </ul> <p>A complete answer is expected to be approximately 10 to 15 pages.</p>					<p>out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>
	40	<p>Registry Transition: provide a <u>Service Migration plan (as described in the Registry Transition Processes)</u> that could be followed in the event that it becomes necessary to <u>permanently transition the proposed gTLD to a new operator. The plan must take into account, and be consistent with the vital business functions identified in the previous question, including a transition process.</u></p> <p><u>Elements of the plan may include, but are not limited to:</u></p> <ul style="list-style-type: none"> <li><u>Preparatory steps needed for the transition of critical registry functions;</u></li> <li><u>Monitoring during registry transition and efforts to minimize any interruption to critical registry functions during this time; and</u></li> <li><u>Contingency plans in the event that any part of the registry transition is unable to move forward according to the plan.</u></li> </ul> <p>A complete answer is expected to be approximately 5 to 10 pages.</p>	N		0-1	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of <u>the Registry Transition Processes</u> <del>this aspect of registry technical requirements;</del> <u>and</u></p> <p>(2) a technical plan scope/scale consistent with the overall business approach and planned size of the registry; <del>and</del></p> <p><del>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section.</del></p>	<p>1 - meets requirements: Response includes</p> <p>(1) Adequate <u>description of a registry transition plan</u> <del>level of detail to that</del> substantially demonstrates <u>the applicant's</u> capability and knowledge required to meet this element;</p> <p>(2) <u>A description</u> <del>Evidence</del> of <u>an</u> adequate registry transition plan with <u>appropriate</u> <del>ad hoc</del> monitoring during registry transition; <u>and</u></p> <p><del>(3)</del> Transition plan is commensurate with the <u>technical, operational, and financial</u> <del>overall business</del> approach as described in the application; <del>and</del></p> <p><del>(4) Resources for registry transition are fully committed.</del></p> <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	41	<p>Failover Testing: provide</p> <ul style="list-style-type: none"> <li>•- a description of the failover testing plan, including mandatory annual testing of the plan. Examples may include a description of plans to test failover of data centers or operations to alternate sites, from a hot to a cold facility, or registry data escrow testing, or other mechanisms. The plan must take into account and be consistent with the vital business functions identified in Question 39; and</li> <li>•- Describe resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul> <p><u>The failover testing plan should include, but is not limited to, the following elements:</u></p> <ul style="list-style-type: none"> <li>• <u>Types of testing (e.g., walkthroughs, takedown of sites) and the frequency of testing;</u></li> <li>• <u>How results are captured, what is done with the results, and with whom results are shared;</u></li> <li>• <u>How test plans are updated (e.g., what triggers an update, change management processes for making updates);</u></li> <li>• <u>Length of time to restore mission critical registry functions;</u></li> <li>• <u>Length of time to restore all operations, inclusive of mission critical registry functions; and</u></li> <li>• <u>Length of time to migrate from one site to another.</u></li> </ul> <p><u>A complete answer is expected to be approximately 5 to 10 pages.</u></p>	N		0- <del>12</del>	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of this aspect of registry technical requirements;</p> <p>(2) a technical plan scope/scale consistent with the overall business approach and planned size of the registry; and</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section.</p>	<p><del>2 – exceeds requirements:</del> Response includes</p> <p><del>(1) Evidence of highly developed and detailed failover testing plan, including periodic testing, robust monitoring, review, and analysis; (2) A high level of resiliency;</del></p> <p><del>(3) Full interplay and consistency of technical and business requirements;</del></p> <p><del>(4) Evidence of technical resources for failover testing already on hand or fully committed.</del></p> <p><b>1 - meets requirements:</b> Response includes</p> <p>(1) <del>An Adequate level of detail</del> <u>description of a failover testing plan that</u> substantially demonstrates <u>the applicant's</u> capability and knowledge required to meet this element;</p> <p>(2) <del>A description of an</del> <u>Evidence of</u> adequate failover testing plan with <u>an appropriate level of</u> <del>ad hoc</del> review and analysis of failover testing results;</p> <p>(3) Failover testing plan is commensurate with the <u>technical, operational, and financial</u> <del>overall</del> <u>business</u> approach as described in the application; and</p> <p>(4) Demonstrates <u>an adequate level</u> <del>that</del> <u>technical of</u> resources <u>that are on hand, committed or required to carry through the plans for this element</u> <del>are</del> readily available <u>to carry out this function.</u></p> <p><b>0 – fails requirements</b> Does not meet all the requirements to score a 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	42	<p>Monitoring and Fault Escalation Processes: provide</p> <ul style="list-style-type: none"> <li>a description of the proposed (or actual) arrangements for monitoring critical registry systems (including SRS, database systems, DNS servers, Whois service, network connectivity, routers and firewalls). This description should explain how these systems are monitored and the mechanisms that will be used for fault escalation and reporting, and should provide details of the proposed support arrangements for these registry systems.</li> <li><del>Describe</del> <u>Describe</u> resourcing plans <u>for the initial implementation of, and ongoing maintenance for, this aspect of the criteria</u> (number and description of personnel roles allocated to this area).</li> </ul> <p><u>To be eligible for a score of 2, answers must also include:</u></p> <ul style="list-style-type: none"> <li><u>Meeting the fault tolerance / monitoring guidelines described</u></li> <li><u>Evidence of commitment to provide a 24x7 fault response team.</u></li> </ul> <p><u>A complete answer is expected to be approximately 5 to 10 pages.</u></p>	N		0-2	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> <li>complete knowledge and understanding of this aspect of registry technical requirements;</li> <li>a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry;</li> <li>a technical plan that is adequately resourced in the planned costs detailed in the financial section; and</li> <li>consistency with the commitments made to registrants regarding system maintenance.</li> </ol>	<p><b>2 - exceeds requirements:</b> Response <u>meets all attributes for a score of 1 and includes</u></p> <ol style="list-style-type: none"> <li>Evidence showing highly developed and detailed fault tolerance/monitoring and redundant systems deployed with real-time monitoring tools / dashboard (metrics) deployed and reviewed regularly;</li> <li>A high level of availability <u>that allows for the ability to respond to faults through a 24x7 response team.;</u></li> <li><del>Full interplay and consistency of technical and business requirements;</del></li> <li><del>Evidence of technical resources for monitoring and fault escalation already on hand or fully committed.</del></li> </ol> <p><b>1 - meets requirements:</b> Response includes</p> <ol style="list-style-type: none"> <li>Adequate <u>description of monitoring and fault escalation processes that level of detail to</u> substantially demonstrate <u>the applicant's</u> capability and knowledge required to meet this element;</li> <li>Evidence showing adequate fault tolerance/monitoring systems planned with <u>ad hoc an appropriate level of</u> monitoring and limited periodic review being performed;</li> <li>Plans are commensurate with <u>the technical, operational, and financial overall business</u> approach <u>described in the application;</u> and</li> <li>Demonstrates <del>that an adequate level of technical</del> resources <u>that are on hand, committed or required to carry through the plans for this element are</u> readily available <u>to carry out this function.</u></li> </ol> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	43	<p>DNSSEC: <u>Provide</u></p> <ul style="list-style-type: none"> <li><u>The registry's DNSSEC policy statement (DPS), which should include Describe</u> the policies and procedures the proposed registry will follow, for example, for signing the zone file, for verifying and accepting DS records from child domains, and for generating, exchanging, and storing keying material;</li> <li><u>Describe how the DNSSEC implementation will comply with relevant RFCs, including but not limited to: RFCs 4033, 4034, 4035, 5910, 4509, 4641, and 5155 (the latter will only be required if Hashed Authenticated Denial of Existence will be offered); and</u></li> <li><u>Describe</u> resourcing plans <u>for the initial implementation of, and ongoing maintenance for, this aspect of the criteria</u> (number and description of personnel roles allocated to this area).</li> </ul> <p><u>A complete answer is expected to be 3 to 5 pages. Note, the DPS is required to be submitted as part of the application</u></p>	N		0-1	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of this aspect of registry technical requirements, <u>one of the five critical registry functions;</u></p> <p>(2) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry; <del>and</del></p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section; <u>and</u></p> <p><u>(4) an ability to comply with relevant RFCs.</u></p>	<p><b>1 - meets requirements:</b> Response includes</p> <p>(1) <u>An adequate description of DNSSEC that level of detail to substantially demonstrates the applicant's</u> capability and knowledge required to meet <u>this element;</u></p> <p>(2) <u>Evidence that the requirement to offer DNSSEC TLD zone files will be signed</u> at time of launch, in compliance with required RFCs, <u>and registry offers provisioning capabilities to accept public keys from registrants through the SRS including and to provide</u> secure encryption key management (generation, exchange, and storage);</p> <p>(3) <u>An adequate description of key</u> management procedures for registrants in the proposed TLD;</p> <p>(4) Technical plan is commensurate with the <u>technical, operational, and financial</u> overall business approach as described in the application; and</p> <p>(5) Demonstrates <u>an adequate level of that technical</u> resources <u>required to carry through the plans for this element that</u> are already on hand, <u>committed</u> or readily available <u>to carry out this function.</u></p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1.</p>
	44	<p><u>OPTIONAL.</u> IDNs:</p> <ul style="list-style-type: none"> <li><u>State whether the proposed registry will support the registration of IDN labels in the TLD, and if so, how.</u> For example, explain which characters will be supported, and provide the associated IDN Tables with variant characters identified, along with a corresponding registration policy. This includes public interfaces to the databases such as Whois and EPP.</li> <li><u>Describe how the IDN implementation will comply with RFCs 5809-5893 as</u></li> </ul>	N	<p>IDNs are an optional service at time of launch. Absence of IDN implementation or plans will not detract from an applicant's score. Applicants who respond to this question with plans for implementation of IDNs at time of launch will be scored according to the criteria indicated here.</p>	0- <del>1</del> 2	<p>IDNs are an optional service. Complete answer demonstrates: (1) complete knowledge and understanding of this aspect of registry technical requirements;</p> <p>(2) a technical plan that is adequately resourced in the planned costs detailed in the financial section;</p> <p>(3) consistency with the commitments made to registrants in the purpose of</p>	<p><del><b>2 - exceeds requirements:</b> Response includes</del></p> <p><del>(1) Evidence of highly developed and detailed procedures for IDNs, including complete IDN tables, compliance with IDNA/IDN guidelines and RFCs, periodic monitoring of IDN operations;</del></p> <p><del>(2) Evidence of ability to resolve rendering and known IDN issues or IDN spoofing attacks;</del></p> <p><del>(3) Full interplay and consistency of technical and business requirements; and</del></p> <p><del>(4) Evidence of technical resources</del></p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p><a href="http://www.icann.org/en/topics/idn/implementation-guidelines.htm">well as the ICANN IDN Guidelines at http://www.icann.org/en/topics/idn/implementation-guidelines.htm.</a></p> <ul style="list-style-type: none"> <li>Describe resourcing plans <a href="#">for the initial implementation of, and ongoing maintenance for, this aspect of the criteria</a> (number and description of personnel roles allocated to this area). <del>Describe how the IDN implementation will comply with RFCs 5890, 5891, 5892, and 5893 as well as the ICANN IDN Guidelines at &lt;http://www.icann.org/en/topics/idn/implementation-guidelines.htm&gt;.</del></li> </ul> <p><a href="#">A complete answer is expected to be approximately 5 to 10 pages plus attachments.</a></p>				<p>the registration and registry services descriptions; <del>and</del> (4) issues regarding use of scripts are settled and IDN tables are complete and publicly available; <del>and</del> <a href="#">(5) ability to comply with relevant RFCs.</a></p>	<p><del>already on hand or committed.</del></p> <p><b>1 - meets requirements for this optional element:</b> Response includes</p> <ol style="list-style-type: none"> <li>Adequate <a href="#">description of IDN implementation that level of detail to substantially demonstrates the applicant's</a> capability and knowledge required to meet this element;</li> <li><a href="#">An adequate description of the IDN procedures, including complete IDN tables, compliance with IDNA/IDN guidelines and RFCs, and periodic monitoring of IDN operations;</a></li> <li>Evidence of <a href="#">ability to resolve rendering and known IDN issues or spoofing attacks;</a></li> <li><del>adequate implementation plans for IDNs in compliance with IDN/IDNA guidelines;</del> IDN plans are consistent with the <a href="#">overall business, technical, operational, and financial</a> approach as described in the application; and</li> <li><a href="#">Demonstrates an adequate level of resources that are on hand, committed that technical resources required to carry through the plans for this element are readily available to carry out this function.</a></li> </ol> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score a 1.</p>
Demonstration of Financial Capability	45	<p>Financial Statements: provide</p> <ul style="list-style-type: none"> <li><del>audited or independently certified</del> financial statements for the most recently completed fiscal year for the applicant, and</li> <li><del>audited or</del> unaudited financial statements for the most recently ended interim financial period for the applicant.</li> </ul> <p>For newly-formed applicants, provide:</p> <ul style="list-style-type: none"> <li><del>the latest available financial statements;</del> <del>and</del></li> <li><a href="#">if audited or independently certified financial statements are not available, an explanation of the reasons.</a></li> </ul> <p><a href="#">The financial statements should be for the legal entity listed as the applicant, not a partner or</a></p>	N	The questions in this section (45-50) are intended to give applicants an opportunity to demonstrate their financial capabilities to run a registry.	0-1	<p>Audited or <a href="#">independently</a> certified financial statements are prepared in accordance with IFRS (International Financial Reporting Standards) adopted by the IASB (International Accounting Standards Board) or nationally recognized accounting standards (e.g., GAAP). This will include a balance sheet and income statement reflecting the applicant's financial position and results of operations, <a href="#">a statement of shareholders equity/partner capital, and a cash flow</a></p>	<p><b>1 - meets requirements:</b> Complete audited or <a href="#">independently</a> certified financial statements are provided, at the highest level available in the applicant's jurisdiction. Where such financial statements are not available, such as for newly-formed entities, the applicant has provided an explanation and has provided, at a minimum, unaudited financial statements.</p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1. For example, entity with an operating history fails to provide audited or <a href="#">independently</a> certified statements.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p><u>parent company. Notes to the financial statements and annual reports or equivalent will not be reviewed.</u></p> <p>Financial statements are used in the analysis of projections and costs.</p> <p><u>A complete answer should include:</u></p> <ul style="list-style-type: none"> <li>• The balance sheet;</li> <li>• The income statement;</li> <li>• The statement of shareholders equity/partner capital;</li> <li>• The cash flow statement, and</li> <li>• <u>The letter of auditor or independent certification, if applicable.</u></li> </ul>				<p><u>statement.</u> In the event the applicant is an entity newly formed for the purpose of applying for a gTLD and without an operating history, the applicant must submit pro forma financial statements reflecting the entity's capitalization for the registry operator. Funding in this latter case must be verifiable as a true and accurate reflection and cannot include prospective funding. Where audited or independently certified statements are not available, applicant has provided adequate explanation as to practices in its jurisdiction and has provided, at a minimum, unaudited financial statements.</p>	
	46	<p>Projections Template: provide financial projections for costs and funding using Template 1, <u>Most Likely Scenario</u> (attached)-<del>for the most likely scenario.</del></p> <p><u>Note, if certain services are outsourced, reflect this in the relevant cost section of the template.</u></p> <p><u>Provide explanations for any periods during which projected revenue is less than projected operating costs, and any impact on operations.</u></p> <p>The template is intended to provide commonality among TLD applications and thereby facilitate the evaluation process. <del>Include explanations for any significant variances between years (or expected in years beyond the timeframe of the template) in any category of costing or funding. Describe the basis / assumptions for the numbers provided, and the rationale for the basis / assumptions. This may include studies, reference data, or other steps taken to develop the responses and validate any assumptions made.</del></p> <p><u>A complete answer is expected to be 1-3 pages</u></p>	N		0- <del>12</del>	<p>Applicant has provided a thorough model that demonstrates a sustainable business (even if break-even is not achieved through the first three years of operation).</p> <p>Applicant's description of projections development is sufficient to show due diligence <del>and basis for projections.</del></p>	<p><del>2-- exceeds requirements:</del></p> <p><del>(1) Model is described in sufficient detail to be determined as a conservative balance of cost, funding and risk, i.e., funding and costs are highly consistent and are representative of a robust on-going concern</del></p> <p><del>(2) Demonstrates resources and plan for sustainable operations; and</del></p> <p><del>(3) Lead-up work done in developing projections is described fully and indicates a sound basis for numbers provided.</del></p> <p><b>1 - meets requirements:</b></p> <p>(1) <u>Financial projections are adequately</u> <del>Model is described in sufficient detail</del> to be determined as a reasonable balance of cost, funding and risk, i.e., funding and costs are consistent and are representative of an on-going concern;</p> <p>(2) Demonstrates resources and plan for sustainable operations;</p> <p>(3) Financial assumptions about the registry services, funding and market are identified; and</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<u>in addition to the template.</u>					(4) Financial estimates are defensible; <del>and</del> <b>0 - fails requirements:</b> Does not meet all of the requirements to score a 1.
	47	<p>Costs and capital expenditures: <u>in conjunction with the financial projections template</u>, - describe and explain:</p> <ul style="list-style-type: none"> <li>• <u>the expected operating costs and capital expenditures of setting up and operating the proposed Registry;</u></li> <li>• <u>what services, if any, are outsourced, as indicated in the cost section of the template, and the reasons for outsourcing;</u></li> <li>• <u>any significant variances between years in any category of expected costs; and</u></li> <li>• <u>a description of the basis / key assumptions including rationale for the costs provided in the projections template. This may include an executive summary or summary outcome of studies, reference data, or other steps taken to develop the responses and validate any assumptions made.</u></li> </ul> <p>As described in the Applicant Guidebook, the information provided will be considered in light of the entire application and the evaluation criteria. Therefore, this answer should agree with the information provided in <del>the</del> <u>template 1</u> to: 1) maintain registry operations, 2) provide registry services described above, and 3) satisfy the technical requirements described in the Demonstration of Technical &amp; Operational Capability section. Costs should include both fixed and variable costs.</p> <p><u>To be eligible for a score of two points, answers must demonstrate a conservative estimate of</u></p>	N	This question is based on the template submitted in question 46.	0-2	<p>Costs identified are consistent with the proposed registry services, adequately fund technical requirements, and are consistent with proposed mission/purpose of the registry. Costs projected are reasonable for a registry of size and scope described in the application. Costs identified include the <u>funding costs (interest expenses and fees) related to the financial/continued operations instrument</u> described in Question 50 below.</p> <p><u>Key assumptions and their rationale are clearly described and may include, but are not limited to:</u></p> <ul style="list-style-type: none"> <li>• <u>Key components of capital expenditures;</u></li> <li>• <u>Key components of operating costs, unit operating costs, headcount, number of technical/operating/equipment units, marketing, and other costs; and</u></li> <li>• <u>Costs of outsourcing, if any.</u></li> </ul>	<p><b>2 - exceeds requirements:</b> <u>Response meets all of the attributes for a score of 1 and</u> <del>(1) Cost elements described are clearly and separately tied to each of the aspects of registry operations: registry services, technical requirements, and other aspects as described by the applicant.</del> <u>(1) Estimated costs and assumptions are conservative and consistent with an operation of the registry volume/scope/size as described by the applicant;</u> <u>(2) Most estimates are derived from actual examples of previous or existing registry operations or equivalent; and</u> <u>(3) Conservative estimates are based on those experiences and describe a range of anticipated costs and use the high end of those estimates.</u></p> <p><b>1 - meets requirements:</b> <u>(1) Cost elements described reasonably cover all of the aspects of registry operations: registry services, technical requirements and other aspects as described by the applicant; and</u> <u>(2) Estimated costs and assumptions are consistent and defensible with an operation of the registry volume/scope/size as described by the applicant; and</u> <u>(3) Projections are reasonably aligned with the historical financial</u></p>

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		<p><u>costs based on actual examples of previous or existing registry operations with similar approach and projections for growth and costs or equivalent. Attach reference material for such examples.</u></p> <p><u>A complete answer is expected to be approximately 2 pages.</u></p>					<p><u>statements provided in Question 45.</u></p> <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>
		<p>(b) Describe anticipated ranges in projected costs. Describe factors that affect those ranges.</p> <p><u>A complete answer is expected to be approximately 2 pages.</u></p>	N				
	48	<p>(a) Funding and Revenue: Funding can be derived from several sources (e.g., existing capital or proceeds/revenue from operation of the proposed registry). <del>For each source (as applicable), d</del></p> <p><u>Describe:</u></p> <p>I) How existing funds will provide resources for both: a) start-up of operations, and b) ongoing operations;</p> <p>II) <del>a description of</del> the revenue model including projections for transaction volumes <u>and price</u> (if the applicant does not intend to rely on registration revenue in order to cover the costs of the registry's operation, it must clarify how the funding for the operation will be developed and maintained in a stable and sustainable manner);</p> <p>III) outside sources of funding (the applicant must, where applicable, provide evidence of the commitment by the party committing the funds). Secured vs unsecured funding should be clearly identified, including associated sources <u>of funding (i.e., different types of funding, level and type of security/collateral, and key items)</u> for each type <u>of funding</u>;</p> <p><u>IV) Any significant variances between years in any category of funding and revenue; and</u></p>	N		0-2	<p>Funding resources are clearly identified and adequately provide for registry cost projections. Sources of capital funding are clearly identified, held apart from other potential uses of those funds and available. The plan for transition of funding sources from available capital to revenue from operations (if applicable) is described. Outside sources of funding are documented and verified and must not include prospective sources of funds. <u>Examples of evidence of commitment include, but are not limited to:</u></p> <ul style="list-style-type: none"> <li>• <u>Executed funding agreements;</u></li> <li>• <u>A letter of credit; or</u></li> <li>• <u>A strong commitment letter.</u></li> </ul>	<p>2 - exceeds requirements: <u>Response meets all the attributes for a score of 1 and</u></p> <p>(1) Existing funds are quantified, <u>on hand</u>, segregated <u>in an account available only to the applicant for purposes of the application only</u>, and earmarked for registry operations;</p> <p>(2) If on-going operations are to be resourced from existing funds (rather than revenue from on-going operations) that funding is segregated and earmarked for this purpose only in an amount adequate for three years operation;</p> <p>(3) <del>(3) Revenues are clearly tied to projected business volumes, market size and penetration;</del> Assumptions made are conservative <u>and take into consideration studies, reference data, or other steps taken to develop the response and validate any assumptions made;</u></p> <p>(4) Cash flow models are prepared which link funding and revenue assumptions to <u>projected</u> actual</p>

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		<p><u>V) A description of the basis / key assumptions including rationale for the funding and revenue provided in the projections template. This may include an executive summary or summary outcome of studies, reference data, or other steps taken to develop the responses and validate any assumptions made.</u></p> <p><u>To be eligible for a score of 2 points, answers must demonstrate:</u></p> <p><u>I) A conservative estimate of funding and revenue; and</u></p> <p><u>II) Ongoing operations that are not dependent on projected revenue.</u></p> <p><u>A complete answer is expected to be approximately 2 pages.</u></p>				<p><u>Funding commitments may be conditional on the approval of the -application.</u> Sources of capital funding required to sustain registry operations on an on-going basis are identified. The projected revenues are consistent with the size and projected penetration of the target markets.</p> <p><u>Key assumptions and their rationale are clearly described and address, at a minimum:</u></p> <ul style="list-style-type: none"> <li>• <u>Key components of the funding plan and their key terms; and</u></li> <li>• <u>Price and number of registrations.</u></li> </ul>	<p>business activity; and</p> <p>(5) Capital is adequately broken down into secured vs <u>unsecuredpledged</u> and is linked to cash flows.</p> <p><b>1 - meets requirements:</b></p> <p>(1) Existing funds are quantified, <u>committed</u>, identified as available and budgeted;</p> <p>(2) If on-going operations are to be resourced from existing funds (rather than revenue from on-going operations) that funding is quantified and its sources identified in an amount adequate for three years operation;</p> <p>(3) Revenues are directly related to projected business volumes, market size and penetration; and</p> <p>(4) Assumptions made are reasonable and defensible; <u>and</u></p> <p>(5) <u>Projections are reasonably aligned with the historical financial statements provided in Question 45.</u></p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score a 1.</p>
		<p>(b) Describe anticipated ranges in projected funding and revenue. Describe factors that affect those ranges.</p> <p><u>A complete answer is expected to be approximately 1 page.</u></p>	N				
	49	<p>(a) Contingency Planning: describe your contingency planning:</p> <ul style="list-style-type: none"> <li>• <u>Identify any projected barriers to implementation of the business approach described in the application and how they affect cost, funding, <u>revenue</u>, or timeline in your planning;</u></li> <li>• <u>Identify the impact of any particular regulation, law or policy that might impact the Registry Services offering; <u>and</u></u></li> <li>• <u>Describe the measures to mitigate the key risks as described in this question.</u></li> </ul> <p><u>A complete answer should include, fFor each contingency, <u>includea clear description of the</u></u></p>	N		0-2	<p>Contingencies and risks are identified and included in the cost, <u>revenue</u>, and funding analyses. Action plans are identified in the event contingencies occur. The model is resilient in the event those contingencies occur. Responses address the probability and resource impact of the contingencies identified.</p>	<p><b>2 - exceeds requirements:</b> <u>Response meets all attributes for a score of 1 and</u> <del>(1) Model identifies thoroughly the key risks and the chances that each will occur: operational, business, legal, and other outside risks; and</del> <del>(2)</del></p> <p>(1) Action plans and operations are adequately resourced in the existing funding and revenue plan even if contingencies occur.</p> <p><b>1 - meets requirements:</b></p> <p>(1) Model <u>adequately</u> identifies the key risks <u>(including operational, business, legal, jurisdictional, financial, and other relevant risks) with sufficient detail to be understood by a business person</u></p>

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		<p>impact to projected revenue, <u>funding</u>, and costs for the 3-year period presented in Template 1 (<u>Most Likely Scenario</u>).</p> <p><u>To be eligible for a score of 2 points, answers must demonstrate that action plans and operations are adequately resourced in the existing funding and revenue plan even if contingencies occur.</u></p> <p><u>A complete answer is expected to be approximately 2 pages.</u></p>					<p><del>with experience in this area;</del></p> <p>(2) Response gives consideration to probability of contingencies identified; and</p> <p>(3) If resources are not available to fund contingencies in the existing plan, funding sources and a plan for obtaining them are identified.</p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score a 1.</p>
		<p>(b) Describe your contingency planning where funding sources are so significantly reduced that material deviations from the implementation model are required. In particular, <u>describe:</u></p> <ul style="list-style-type: none"> <li><u>how will on-going technical requirements will be met?; and</u></li> <li><u>what alternative funding can be reasonably raised at a later time.</u></li> </ul> <p><u>Provide an explanation if you do not believe there is any chance of reduced funding.</u></p> <p>Complete a financial projections template (Template 2, <u>Worst Case Scenario</u>) <del>for the worst case scenario.</del></p> <p><u>A complete answer is expected to be approximately 2 pages, in addition to the template.</u></p>	N				
		<p><u>(c)</u> Describe your contingency planning where activity volumes so significantly exceed the high projections that material deviation from the implementation model are required. In particular, how will on-going technical requirements be met?</p> <p><u>A complete answer is expected to be approximately 1 page.</u></p>	N				
	50	<p>(a) Provide a cost estimate for funding critical registry operations on an annual basis, <u>and a rationale for these cost estimates commensurate with the technical, operational, and financial approach described in the application.</u></p> <p>The critical functions of a registry which</p>	N	<p>Registrant protection is critical and thus new gTLD applicants are requested to provide evidence indicating that the critical functions will continue to be performed even if the registry fails. Registrant needs are best protected by a clear demonstration that the basic registry functions are sustained for an extended period even in the face of registry</p>	0-3	<p>Figures provided are based on an accurate estimate of costs. Documented evidence or detailed plan for ability to fund on-going critical registry operations for registrants for a period of three <del>to five</del> years in the event of registry</p>	<p><b>3 - exceeds requirements:</b></p> <p><u>Response meets all the attributes for a score of 1 and:</u></p> <p>(1) <del>Costs are commensurate with technical plans and overall business approach as described in the application; and</del></p> <p>(2) Financial instrument is secured and</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>must be supported even if an applicant's business and/or funding fails are:</p> <p>(1) DNS resolution for registered domain names;  <u>Applicants should consider ranges of volume of daily DNS queries (e.g., 0-100M, 100M-1B, 1B+), the incremental costs associated with increasing levels of such queries, and the ability to meet SLA performance metrics.</u></p> <p>(2) Operation of the Shared Registration System;  <u>Applicants should consider ranges of volume of daily EPP transactions (e.g., 0-200K, 200K-2M, 2M+), the incremental costs associated with increasing levels of such queries, and the ability to meet SLA performance metrics.</u></p> <p>(3) Provision of Whois service;  <u>Applicants should consider ranges of volume of daily Whois queries (e.g., 0-100K, 100k-1M, 1M+), the incremental costs associated with increasing levels of such queries, and the ability to meet SLA performance metrics for both web-based and port-43 services.</u></p> <p>(4) Registry data escrow deposits  <u>Applicants should consider administration, retention, and transfer fees as well as daily deposit (e.g., full or incremental) handling. Costs may vary depending on the size of the files in escrow (i.e., the size of the registry database); and</u></p> <p>(5) Maintenance of a properly signed zone in accordance with DNSSEC</p>		<p>failure. Therefore, this section is weighted heavily as a clear, objective measure to protect and serve registrants.</p> <p>The applicant has two tasks associated with adequately making this demonstration of continuity for critical registry functions. First, costs for maintaining critical registrant protection functions are to be estimated (Part a). In evaluating the application, the evaluators will adjudge whether the estimate is reasonable given the systems architecture and overall business approach described elsewhere in the application.</p> <p><u>The Continuing Operations Instrument (COI) is invoked by ICANN if necessary to pay for an Emergency Back End Registry Operator (EBERO) to maintain the five critical registry functions for a period of three to five years. Thus, the cost estimates are tied to the cost for a third party to provide the functions, not to the applicant's actual in-house or subcontracting costs for provision of these functions.</u></p> <p><u>Note that ICANN is building a model for these costs in conjunction with potential EBERO service providers. Thus, guidelines for determining the appropriate amount for the COI will be available to the applicant.</u></p>		<p>failure, default or until a successor operator can be designated. Evidence of financial wherewithal to fund this requirement prior to delegation. This requirement must be met prior to or concurrent with the execution of the Registry Agreement.</p>	<p>in place to provide for on-going operations for at least three years in the event of failure.</p> <p><b>1 - meets requirements:</b></p> <p>(1) Costs are commensurate with technical, <u>operational, and financial plans and overall business approach</u> as described in the application; and</p> <p>(2) Funding is identified and instrument is described to provide for on-going operations of at least three years in the event of failure.</p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score a 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>requirements.</p> <p><u>Applicants should consider ranges of volume of daily DNS queries (e.g., 0-100M, 100M-1B, 1B+), the incremental costs associated with increasing levels of such queries, and the ability to meet SLA performance metrics.</u></p> <p>List the estimated annual cost for each of these functions (specify currency used).</p> <p><u>A complete answer is expected to be approximately 2 pages.</u></p>					
		<p>(b) Applicants must provide evidence as to how the funds required for performing these critical registry functions will be available and guaranteed to fund registry operations (for the protection of registrants in the new gTLD) for a minimum of three years following the termination of the Registry Agreement. ICANN has identified two methods to fulfill this requirement:</p> <p><u>(i) Irrevocable standby letter of credit (LOC) issued by a reputable financial institution.</u></p> <ul style="list-style-type: none"> <li>The amount of the LOC must be equal to or greater than the amount required to fund the registry operations specified above for at least three years. In the event of a draw upon the letter of credit, the actual payout would be tied to the cost of running those functions.</li> <li>The LOC must name ICANN or its designee as the beneficiary. Any funds paid out would be provided to the designee who is operating the required registry functions.</li> <li>The LOC must have a term of at least five years from the delegation of the TLD. The LOC may be structured with an annual expiration date if it contains an evergreen provision providing for annual extensions, without amendment, for an indefinite number of periods until the issuing bank informs the beneficiary of its final expiration or until the beneficiary releases the LOC as evidenced in writing. If the expiration date occurs prior to the fifth anniversary of the delegation of the TLD, applicant will be required to obtain a replacement instrument.</li> <li>The LOC must be issued by a reputable financial institution insured at the highest level in</li> </ul>	N	<p>Second (Part b), methods of securing the funds required to perform those functions for at least three years are to be described by the applicant in accordance with the criteria below. Two types of instruments will fulfill this requirement. The applicant must identify which of the two methods is being described. The instrument is required to be in place at the time of the execution of the Registry Agreement.</p>			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>its jurisdiction. This may include a bank or insurance company with a strong international reputation that has a strong credit rating issued by a third party rating agency such as Standard &amp; Poor's (AA or above), Moody's (Aa or above), or A.M. Best (A-X or above). Documentation should indicate by whom the issuing institution is insured.</p> <ul style="list-style-type: none"> <li>• The LOC will provide that ICANN or its designee shall be unconditionally entitled to a release of funds (full or partial) thereunder upon delivery of written notice by ICANN or its designee.</li> <li>• Applicant should attach an original copy of the executed letter of credit or a draft of the letter of credit containing the full terms and conditions. If not yet executed, the Applicant will be required to provide ICANN with an original copy of the executed LOC prior to or concurrent with the execution of the Registry Agreement.</li> <li>• The LOC must contain at least the following required elements: <ul style="list-style-type: none"> <li>○ Issuing bank and date of issue.</li> <li>○ Beneficiary: ICANN / 4676 Admiralty Way, Suite 330 / Marina del Rey, CA 90292 / US, or its designee.</li> <li>○ Applicant's complete name and address.</li> <li>○ LOC identifying number.</li> <li>○ Exact amount in USD.</li> <li>○ Expiry date.</li> <li>○ Address, procedure, and required forms whereby presentation for payment is to be made.</li> <li>○ Conditions: <ul style="list-style-type: none"> <li>▪ Partial drawings from the letter of credit may be made provided that such payment shall reduce the amount under the standby letter of credit.</li> <li>▪ All payments must be marked with the issuing bank name and the bank's standby letter of credit number.</li> <li>▪ LOC may not be modified, amended, or amplified by reference to any other document, agreement, or instrument.</li> </ul> </li> </ul> </li> </ul> <p>The LOC is subject to the International Standby Practices (ISP 98) International Chamber of Commerce (Publication No. 590).</p> <p>(ii) A <u>deposit into an irrevocable cash escrow account</u> held by a reputable financial institution.</p> <ul style="list-style-type: none"> <li>• The amount of the deposit must be equal</li> </ul>					

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>to or greater than the amount required to fund registry operations for at least three years.</p> <ul style="list-style-type: none"> <li>• Cash is to be held by a third party financial institution which will not allow the funds to be commingled with the Applicant's operating funds or other funds and may only be accessed by ICANN or its designee if certain conditions are met.</li> <li>• The account must be held by a reputable financial institution insured at the highest level in its jurisdiction. This may include a bank or insurance company with a strong international reputation that has a strong credit rating issued by a third party rating agency such as Standard &amp; Poor's (AA or above), Moody's (Aa or above), or A.M. Best (A-X or above). Documentation should indicate by whom the issuing institution is insured.</li> <li>• The escrow agreement relating to the escrow account will provide that ICANN or its designee shall be unconditionally entitled to a release of funds (full or partial) thereunder upon delivery of written notice by ICANN or its designee.</li> <li>• The escrow agreement must have a term of five years from the delegation of the TLD.</li> <li>• The funds in the deposit escrow account are not considered to be an asset of ICANN.</li> <li>• Any interest earnings less bank fees are to accrue to the deposit, and will be paid back to the applicant upon liquidation of the account to the extent not used to pay the costs and expenses of maintaining the escrow.</li> <li>• The deposit plus accrued interest, less any bank fees in respect of the escrow, is to be returned to the applicant if the funds are not used to fund registry operations due to a triggering event or after five years, whichever is greater.</li> <li>• The Applicant will be required to provide ICANN an explanation as to the amount of the deposit, the institution that will hold the deposit, and the escrow agreement for the account at the time of submitting an application.</li> <li>• Applicant should attach evidence of deposited funds in the escrow account, or evidence of provisional arrangement for deposit of funds. Evidence of deposited funds and terms</li> </ul>					

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		of escrow agreement must be provided to ICANN prior to or concurrent with the execution of the Registry Agreement.					

**TLD Applicant -- Financial Projections : Instructions**

Where appropriate, please reference data points and/or formulas used in your calculations

Reference / Formula	Live / Operational		
	Start-up	Year 1	Year 2

Reference / Formula	Start-up	Year 1	Year 2	Year 3	Comments / Notes
<b>I) Projected Revenue &amp; Operating Costs</b>					
A) Forecasted registration					
B) Registration fee					
C) Registration revenue					
D) Other revenue					
E) Total Revenue					
<b>Projected Operating Cost</b>					
F) Labor:					
i) Marketing Labor					
ii) Customer Support Labor					
iii) Technical Labor					
G) Marketing					
H) Facilities					
I) General & Administrative					
J) Interest and Taxes					
K) Depreciation					
L) Outsourcing Operating Costs					
i)					
ii)					
M) Other Operating costs					
N) Total Operating Costs					
O) Projected Net Income (Revenue less Operating costs)					
<b>IIa) Break out of Fixed and Variable Operating Costs</b>					
A) Total Variable Operating Costs					
B) Total Fixed Operating Costs					
C) Total Operating Costs					
<b>IIb) Break out of Critical Function Operating Costs</b>					
A) Operation of SRS					
B) Provision of Whois					
C) DNS Resolution for Registered Domain Names					
D) Registry Data Escrow					
E) Maintenance of Zone in accordance with DNSSEC					
F) Other					
G) Total Critical Function Costs					
H) 3-year total					
<b>III) Projected Capital Expenditures</b>					
A) Hardware					
B) Software					
C) Furniture & Equipment					
D) Outsourcing Capital Expenditure, if any					
E) Other Capital Expenditures					
F) Total Capital Expenditures					
<b>IV) Projected Assets &amp; Liabilities</b>					
A) Cash					
B) Accounts receivable					
C) Other current assets					
D) Total current assets					
E) Accounts payable					
F) Short term debt					
G) Other current liabilities					
H) Total Current Liabilities					
I) Total Property, Plant & Equipment (PP&E)					
J) 3-year reserve					
K) Other long term assets					
L) Total Long Term Assets					
M) Total Long Term Debt					
<b>V) Projected Cash flow (excluding 3-year reserve)</b>					
A) Net income (loss)					
B) Add depreciation					
C) Current Year Capital expenditures					
D) Change in Non-cash Current Assets	n/a				
E) Change in Total Current Liabilities	n/a				
F) Debt Adjustments	n/a				
G) Other Adjustments					
H) Net Projected Cash Flow					
<b>VI) Sources of funds</b>					
A) Debt:					
i) On-hand at time of application					
ii) Contingent and/or committed but not yet on-hand					
B) Equity:					
i) On-hand at time of application					
ii) Contingent and/or committed but not yet on-hand					
C) Total Sources of funds					

**General Instructions**

The application process requires the applicant to submit two Financial Projections. The first projection (Template 1) should show the revenues and costs associated with the Most Likely scenario expected. This projection should include the number of registrations, the registration fee, and all costs and capital expenditures expected during the start-up period and during the first three years of operations. Template 1 relates to Question 46 (Projections Template) in the application.

We also ask applicants to show as a separate projection (Template 2) the revenues and costs associated with a realistic Worst Case Scenario assuming that the registry does not succeed. Template 2 relates to Question 49 (Contingency Planning) in the application.

For each Projection prepared, please include Comments and Notes on the bottom of the projection (in the area provided) to provide those reviewing these projections with information regarding:  
1) Assumptions Used, Significant Variances in Revenues, Costs, and Capital Expenditures from year-to-year;  
2) How you plan to fund operations;  
3) Contingency Planning

Include Comments that will assist those reviewing this projection in understanding your business approach and any expected trends or variations.

The Start-up Period is for Costs and Capital Expenditures only; there should be no revenue projections input to this column. Please describe the total period of time this is expected to cover.

Marketing Costs represent the amount spent on advertising, promotions, and other marketing activity. This amount should not include Labor Costs which is included in "Marketing Labor" above.

Variable expenses include labor and other costs that are not fixed in nature (expenditures that fluctuate in relationship with increases or decreases in production or level of operations).

Fixed costs are expenditures that do not generally fluctuate in relationship with increases or decreases in production or level of operations. Such costs are generally necessary to be incurred in order to operate the base line operations of the organization or are expected to be incurred based on contractual commitments.

Equals the operational costs for the projected 3 years (columns H, I, and J)

Applicant should list expected useful lives of capital expenditures used and determine annual depreciation.

Please describe "other" capital expenditures and their useful lives for depreciation.

Applicant must prepare projected assets & liabilities for the Start Up and subsequent 3-year period

Cash Flow is driven by Projected Net Operations (Sec. I), Projected Capital

Depreciation should equal total depreciation expense from Sec. I.

Applicant should describe sources of debt and equity funding and provide evidence thereof (e.g., letter of commitment).

General Comments (Notes Regarding Assumptions Used, Significant Variances Between Years, etc.):

Comments regarding how the Applicant plans to fund operations:

General Comments regarding contingencies:

Include explanations for any significant variances between years (or expected in years beyond the timeframe of the template) in any category of costing or funding.

TLD Applicant -- Financial Projections : Sample

Comments / Notes

In local currency (unless noted otherwise)		Live / Operational				Provide name of local currency used. <b>Exhibit R-9</b>	
Sec.	Reference / Formula	Start-up Costs	Year 1	Year 2	Year 3		
<b>I) Projected Revenue &amp; Operating Cost</b>							
A)	Forecasted registration	-	62,000	80,600	104,780	Registration was forecasted based on recent market surveys. We do not anticipate significant increases in Registration Fees subsequent to year 3.	
B)	Registration fee	\$ -	\$ 5.00	\$ 5.50	\$ 6.05		
C)	Registration revenue	A * B	-	310,000	443,300	633,919	Other revenues represent advertising revenue from display ads on our website.
D)	Other revenue		-	35,000	48,000	62,000	
E) Total Revenue			-	345,000	491,300	695,919	
<b>Projected Operating Cost</b>							
F) Labor:							
i)	Marketing Labor		25,000	66,000	72,000	81,000	Costs are further detailed and explained in response to question 47.
ii)	Customer Support Labor		5,000	68,000	71,000	74,000	
iii)	Technical Labor		32,000	45,000	47,000	49,000	
G)	Marketing		40,000	44,000	26,400	31,680	Depreciation reflects total projected capital expenditures (\$173k) divided by useful lives: Start up = \$130k/3 + \$43k/5 = \$51,933 Subsequent depreciation amounts reflect previous year's depreciation expense plus depreciation for additional capital expenditures over appropriate useful lives.
H)	Facilities		7,000	10,000	12,000	14,400	
I)	General & Administrative		14,000	112,000	122,500	136,000	
J)	Interest and Taxes		27,500	29,000	29,800	30,760	
K)	Depreciation		51,933	69,333	85,466	59,733	
L) Outsourcing Operating Costs, if any (list the type of activities being outsourced):						Provide a list and associated cost for each outsourced function.	
i)	Hot site maintenance		5,000	7,500	7,500	7,500	Outsourcing hot site to ABC Company, cost based on number of servers hosted and customer support
ii)	Critical Registry Functions		32,000	37,500	41,000	43,000	Outsourced to critical registry and other functions to ABC registry. Costs are based on expected domains and queries
iii)	{list type of activities being outsourced}		-	-	-	-	Provide a description of the outsourced activities and how costs were determined
iv)	{list type of activities being outsourced}		-	-	-	-	Provide a description of the outsourced activities and how costs were determined
v)	{list type of activities being outsourced}		-	-	-	-	Provide a description of the outsourced activities and how costs were determined
vi)	{list type of activities being outsourced}		-	-	-	-	Provide a description of the outsourced activities and how costs were determined
M)	Other Operating Costs		12,200	18,000	21,600	25,920	
NM) Total Operating Costs			251,633	506,333	536,266	552,993	
Projected Net Income Operation (Revenues less Operating Costs)		E - NM	(251,633)	(161,333)	(44,966)	142,926	
<b>IIa) Break out of Fixed and Variable Operating Costs</b>							
A)	Total Variable Operating Costs		124,000	232,750	239,930	260,416	Variable Costs: -Start Up equals all labor plus 75% of marketing. -Years 1 through 3 equal 75% of all labor plus 50% of Marketing, and 30% of G&A and Other costs
B)	Total Fixed Operating Costs		127,633	273,583	296,336	292,577	Fixed Costs: equals Total Costs less Variable Costs
C) Total Operating Costs		= Sec. I) NM	251,633	506,333	536,266	552,993	Check that II) C equals I) N.
CHECK			-	-	-	-	
<b>IIb) Break out of Critical Function Operating Costs</b>						Note: ICANN is working on cost model that will be provided at a later date	
A)	Operation of SRS		5,000	5,000	5,500	6,050	Commensurate with Question 24
B)	Provision of Whois		5,000	6,000	6,600	7,260	Commensurate with Question 26
C)	DNS Resolution for Registered Domain Names		5,000	7,000	7,700	8,470	Commensurate with Question 35
D)	Registry Data Escrow		5,000	8,000	8,800	9,680	Commensurate with Question 38
E)	Maintenance of Zone in accordance with DNSSEC		5,000	9,000	9,900	10,890	Commensurate with Question 43
F)	Other		-	-	-	-	
G) Total Critical Function Costs			25,000	35,000	38,500	42,350	
H) 3-year Total			115,850				
<b>III) Projected Capital Expenditures</b>							
A)	Hardware		98,000	21,000	16,000	58,000	-Hardware & Software have a useful life of 3 years
B)	Software		32,000	18,000	24,000	11,000	
C)	Furniture & Other Equipment		43,000	22,000	14,000	16,000	-Furniture & other equipment have a useful life of 5 years
D) Outsourcing Capital Expenditures, if any (list the type of capital expenditures)							
i)			-	-	-	-	List and describe each identifiable type of outsourcing.
ii)			-	-	-	-	List and describe each identifiable type of outsourcing.
iii)			-	-	-	-	List and describe each identifiable type of outsourcing.
iv)			-	-	-	-	List and describe each identifiable type of outsourcing.
v)			-	-	-	-	List and describe each identifiable type of outsourcing.
vi)			-	-	-	-	List and describe each identifiable type of outsourcing.
E) Other Capital Expenditures							
FE) Total Capital Expenditures			173,000	61,000	54,000	85,000	
<b>IV) Projected Assets &amp; Liabilities</b>							
A)	Cash		705,300	556,300	578,600	784,600	
B)	Accounts receivable			70,000	106,000	160,000	
C)	Other current assets			40,000	60,000	80,000	
D) Total Current Assets			705,300	666,300	744,600	1,024,600	

TLD Applicant -- Financial Projections : **Sample**

Comments / Notes

In local currency (unless noted otherwise)

Provide name of local currency used.

**Exhibit R-9**

Sec.	Reference / Formula	Live / Operational			
		Start-up Costs	Year 1	Year 2	Year 3
E) Accounts payable		41,000	110,000	113,000	125,300
F) Short-term Debt					
G) Other Current <del>Accrued</del> Liabilities					
HG) Total Current Liabilities		41,000	110,000	113,000	125,300
I) Total Property, Plant & Equipment (PP&E)	= Sec III) FE: cumulative Prior Yr + Cur Yr	173,000	234,000	288,000	373,000
J) 3-year Reserve	= IIb) H)	25,000	115,850	115,850	115,850
K) Other Long-term Assets					
L) Total Long-term Assets		198,000	349,850	403,850	488,850
M) Total Long-term Debt		1,000,000	1,000,000	1,000,000	1,000,000
Principal payments on the line of credit with XYZ Bank will not be incurred until Year 5. Interest will be paid as incurred and is reflected in Sec I) J.					
V) Projected Cash flow (excl. 3-year Reserve)					
A) Net income (loss)	= Sec. I) OH	(251,633)	(161,333)	(44,966)	142,926
B) Add depreciation	= Sec. I) K	51,933	69,333	85,466	59,733
C) Capital expenditures	= Sec. III) FE	(173,000)	(61,000)	(54,000)	(85,000)
D) Change in Non Cash Current Assets	= Sec. IV) (B+C): Prior Yr - Cur Yr	n/a	(110,000)	(56,000)	(74,000)
E) Change in Total Current Liabilities	= Sec. IV) HG: Cur Yr - Prior Yr	41,000	69,000	3,000	12,300
The \$41k in Start Up Costs represents an offset of the Accounts Payable reflected in the Projected balance sheet. Subsequent years are based on changes in Current Liabilities where Prior Year is subtracted from the Current year					
F) Debt Adjustments	= Sec IV) F and M): Cur Yr - Prior Yr	n/a	-	-	-
G) Other Adjustments					
H) Projected Net Cash flow		(331,700)	(194,000)	(66,500)	55,959
VI) Sources of funds					
A) Debt:					
i) On-hand at time of application		1,000,000			
ii) Contingent and/or committed but not yet on-hand					
B) Equity:					
i) On-hand at time of application					
ii) Contingent and/or committed but not yet on-hand					
C) Total Sources of funds		1,000,000			
General Comments (Notes Regarding Assumptions Used, Significant Variances Between Years, etc.):					
We expect the number of registrations to grow at approximately 30% per year with an increase in the registration fee of \$1 per year for the first three years. We anticipate our costs will increase at a controlled pace over the first three years except for marketing costs which will be higher in the start-up and first year as we establish our brand name and work to increase registrations. Our capital expenditures will be greatest in the start-up phase and then our need to invest in computer hardware and software will level off after the start-up period. Our investment in Furniture and Equipment will be greatest in the start-up period as we build our infrastructure and then decrease in the following periods.					
Comments regarding how the Applicant plans to Fund operations:					
We have recently negotiated a line of credit with XYZ Bank (a copy of the fully executed line of credit agreement has been included with our application) and this funding will allow us to purchase necessary equipment and pay for employees and other Operating Costs during our start-up period and the first few years of operations. We expect that our business operation will be self funded (i.e., revenue from operations will cover all anticipated costs and capital expenditures) by the second half of our second year in operation; we also expect to become profitable with positive cash flow in year three.					
General Comments regarding contingencies:					
Although we expect to be cash flow positive by the end of year 2, the recently negotiated line of credit will cover our operating costs for the first 4 years of operation if necessary. We have also entered into an agreement with XYZ Co. to assume our registrants should our business model not have the ability to sustain itself in future years. Agreement with XYZ Co. has been included with our application.					

See below for comments on funding. Revenues are further detailed and explained in response to question 48.

**Template 1 - Financial Projections: Most Likely**

In local currency (unless noted otherwise)

Comments / Notes

Provide name of local currency used.

Sec.	Reference / Formula	Live / Operational			Comments / Notes
		Start-up Costs	Year 1	Year 2	
<b>I) Projected Revenue &amp; Operating Cost</b>					
A)	Forecasted registration				
B)	Registration fee				
C)	Registration revenue				
D)	Other revenue				
	<b>E) Total Revenue</b>				
<b>Projected Operating Cost</b>					
F)	Labor:				
i)	Marketing Labor				
ii)	Customer Support Labor				
iii)	Technical Labor				
G)	Marketing				
H)	Facilities				
I)	General & Administrative				
J)	Interest and Taxes				
K)	Depreciation				
L)	Outsourcing Operating Costs, if any (list the type of activities being outsourced):				
i)	(list type of activities being outsourced)				
ii)	(list type of activities being outsourced)				
iii)	(list type of activities being outsourced)				
iv)	(list type of activities being outsourced)				
v)	(list type of activities being outsourced)				
vi)	(list type of activities being outsourced)				
M)	Other Operating Costs				
	<b>N) Total Operating Costs</b>				
O)	<b>Projected Net Income (Revenues less Operating Costs)</b>				
<b>Iia) Break out of Fixed and Variable Operating Costs</b>					
A)	Total Variable Operating Costs				
B)	Total Fixed Operating Costs				
	<b>C) Total Operating Costs</b>				
	CHECK				
<b>Iib) Break out of Critical Function Operating Costs</b>					
A)	Operation of SRS				
B)	Provision of Whois				
C)	DNS Resolution for Registered Domain Names				
D)	Registry Data Escrow				
E)	Maintenance of Zone in accordance with DNSSEC				
F)	Other				
	<b>G) Total Critical Function Costs</b>				
	<b>H) 3-year Total</b>				
<b>III) Projected Capital Expenditures</b>					
A)	Hardware				
B)	Software				
C)	Furniture & Other Equipment				
D)	Outsourcing Capital Expenditures, if any (list the type of capital expenditures)				
i)					
ii)					
iii)					
iv)					
v)					
vi)					
E)	Other Capital Expenditures				
	<b>F) Total Capital Expenditures</b>				
<b>IV) Projected Assets &amp; Liabilities</b>					
A)	Cash				
B)	Accounts receivable				
C)	Other current assets				
	<b>D) Total Current Assets</b>				
E)	Accounts payable				
F)	Short-term Debt				
G)	Other Current Liabilities				
	<b>H) Total Current Liabilities</b>				
I)	Total Property, Plant & Equipment (PP&E)				
J)	3-year Reserve				
K)	Other Long-term Assets				
	<b>L) Total Long-term Assets</b>				
M)	<b>Total Long-term Debt</b>				
<b>V) Projected Cash flow (excl. 3-year Reserve)</b>					
A)	Net income (loss)				
B)	Add depreciation				
C)	Capital expenditures				
D)	Change in Non Cash Current Assets	n/a			
E)	Change in Total Current Liabilities				
F)	Debt Adjustments	n/a			
G)	Other Adjustments				
	<b>H) Projected Net Cash flow</b>				
<b>VI) Sources of funds</b>					
A)	Debt:				
i)	On-hand at time of application				
ii)	Contingent and/or committed but not yet on-hand				
B)	Equity:				
i)	On-hand at time of application				
ii)	Contingent and/or committed but not yet on-hand				
	<b>C) Total Sources of funds</b>				

General Comments (Notes Regarding Assumptions Used, Significant Variances Between Years, etc.):

Comments regarding how the Applicant plans to Fund operations:

General Comments regarding contingencies:

Template 2 - Financial Projections: Worst Case

Comments / Notes

In local currency (unless noted otherwise)

Provide name of local currency used.

Sec.	Reference / Formula	Live / Operational			
		Start-up Costs	Year 1	Year 2	Year 3
<b>I) Projected Revenue &amp; Operating Cost</b>					
A) Forecasted registration					
B) Registration fee					
C) Registration revenue					
D) Other revenue					
E) Total Revenue					
<b>Projected Operating Cost</b>					
F) Labor:					
i) Marketing Labor					
ii) Customer Support Labor					
iii) Technical Labor					
G) Marketing					
H) Facilities					
I) General & Administrative					
J) Interest and Taxes					
K) Depreciation					
L) Outsourcing Operating Costs, if any (list the type of activities being outsourced):					
i) (list type of activities being outsourced)					
ii) (list type of activities being outsourced)					
iii) (list type of activities being outsourced)					
iv) (list type of activities being outsourced)					
v) (list type of activities being outsourced)					
vi) (list type of activities being outsourced)					
M) Other Operating Costs					
N) Total Operating Costs					
O) Projected Net Income(Revenues less Operating Costs)					
<b>IIa) Break out of Fixed and Variable Operating Costs</b>					
A) Total Variable Operating Costs					
B) Total Fixed Operating Costs					
C) Total Operating Costs	CHECK				
<b>IIb) Break out of Critical Function Operating Costs</b>					
A) Operation of SRS					
B) Provision of Whois					
C) DNS Resolution for Registered Domain Names					
D) Registry Data Escrow					
E) Maintenance of Zone in accordance with DNSSEC					
F) Other					
G) Total Critical Function Costs					
H) 3-year Total					
<b>III) Projected Capital Expenditures</b>					
A) Hardware					
B) Software					
C) Furniture & Other Equipment					
D) Outsourcing Capital Expenditures, if any (list the type of capital expenditures)					
i)					
ii)					
iii)					
iv)					
v)					
vi)					
E) Other Capital Expenditures					
F) Total Capital Expenditures					
<b>IV) Projected Assets &amp; Liabilities</b>					
A) Cash					
B) Accounts receivable					
C) Other current assets					
D) Total Current Assets					
E) Accounts payable					
F) Short-term Debt					
G) Other Current Liabilities					
H) Total Current Liabilities					
I) Total Property, Plant & Equipment (PP&E)					
J) 3-year Reserve					
K) Other Long-term Assets					
L) Total Long-term Assets					
M) Total Long-term Debt					
<b>V) Projected Cash flow (excl. 3-year Reserve)</b>					
A) Net income (loss)					
B) Add depreciation					
C) Capital expenditures					
D) Change in Non Cash Current Assets	n/a				
E) Change in Total Current Liabilities					
F) Debt Adjustments	n/a				
G) Other Adjustments					
H) Projected Net Cash flow					
<b>VI) Sources of funds</b>					
A) Debt:					
i) On-hand at time of application					
ii) Contingent and/or committed but not yet on-hand					
B) Equity:					
i) On-hand at time of application					
ii) Contingent and/or committed but not yet on-hand					
C) Total Sources of funds					

General Comments (Notes Regarding Assumptions Used, Significant Variances Between Years, etc.):

Comments regarding how the Applicant plans to Fund operations:

General Comments regarding contingencies:



# Applicant Guidebook

## April 2011 Discussion Draft Module 3

Please note that this is a discussion draft only. Potential applicants should not rely on any of the proposed details of the new gTLD program as the program remains subject to further consultation and revision.

15 April 2011

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# Module 3

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## ~~Dispute Resolution~~Objection Procedures

This module describes two types of mechanisms that may affect an application:

- I. The procedure by which ICANN's Governmental Advisory Committee (GAC) may provide GAC Advice on New gTLDs to the ICANN Board of Directors concerning a specific application. This module describes the purpose of this procedure, and how GAC Advice on New gTLDs is considered by the ICANN Board once received.
- II. The dispute resolution procedure triggered by a formal objection to an application by a third party. This module describes the purpose of the objection and dispute resolution mechanisms, the grounds for lodging a formal objection to a gTLD application, the general procedures for filing or responding to an objection, and the manner in which dispute resolution proceedings are conducted.

This module also discusses the guiding principles, or standards, that each dispute resolution panel will apply in reaching its expert determination.

All applicants should be aware of the possibility that a formal objection may be filed against any application, and of the procedures and options available in the event of such an objection.

### **3.1 GAC Advice on New gTLDs**

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ICANN's Governmental Advisory Committee was formed to consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN's policies and various laws and international agreements or where they may affect public policy issues.

The process for GAC Advice on New gTLDs is intended to address applications that are identified by governments to be problematic, e.g., that potentially violate national law or raise sensitivities.

GAC members can raise concerns about any application to the GAC. The GAC as a whole will consider concerns raised by GAC members, and agree on GAC advice to forward to the ICANN Board of Directors.

The GAC can provide advice on any application. For the Board to be able to consider the GAC advice during the evaluation process, the GAC advice would have to be submitted by the close of the Objection Filing Period (see Module 1).

ICANN's transparency requirements indicate that GAC Advice on New gTLDs should identify objecting countries, the public policy basis for the objection, and the process by which consensus was reached. To be helpful to the Board, the explanation might include, for example, sources of data and the information on which the GAC relied in formulating its advice.

GAC Advice may take several forms, among them:

- I. If the GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed, that will create a strong presumption for ICANN that the application should not be approved. In the event that the ICANN Board determines to approve an application despite the consensus advice of the GAC, the GAC and the ICANN Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution. In the event the Board determines not to accept the GAC Advice, the Board will provide a rationale for its decision.
  
- II. If the GAC provides advice that does not indicate the presence of a GAC consensus, or any advice that does not state that the application should not proceed, such advice will be passed on to the applicant but will not create any presumption that the application should be denied, and such advice would not require the Board to undertake the process for attempting to find a mutually acceptable solution with the GAC should the application be approved. Note that in any case, that the Board will take seriously any other advice that GAC might provide.
  
- III. If the GAC advises ICANN that GAC consensus is that an application should not proceed unless remediated, this will raise a strong presumption for the Board that the application should not proceed. If there is a

remediation method available in the Guidebook (such as securing government approval), that action may be taken. However, material amendments to applications are generally prohibited and if there is no remediation method available, the application will not go forward and the applicant can re-apply in the second round.

Where GAC Advice on New gTLDs is received by the Board concerning an application, ICANN will endeavor to notify the relevant applicant(s) promptly and the applicant will have a period of 21 calendar days in which to submit a response to the ICANN Board.

ICANN will consider the GAC Advice on New gTLDs as soon as practicable. The Board may consult with independent experts, such as those designated to hear objections in the New gTLD Dispute Resolution Procedure, in cases where the issues raised in the GAC advice are pertinent to one of the subject matter areas of the objection procedures. The receipt of GAC advice will not toll the processing of any application.

### ***3.2 Public Objection and Purpose and Overview of the Dispute Resolution Process***

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The independent dispute resolution process is designed to protect certain interests and rights. The process provides a path for formal objections during evaluation of the applications. It allows a party with standing to have its objection considered before a panel of qualified experts.

A formal objection can be filed only on four enumerated grounds, as described in this module. A formal objection initiates a dispute resolution proceeding. In filing an application for a gTLD, the applicant agrees to accept the applicability of this gTLD dispute resolution process. Similarly, an objector accepts the applicability of this gTLD dispute resolution process by filing its objection.

As described in section 3.1 above, ICANN's Governmental Advisory Committee (GAC) has a designated process for providing advice to the ICANN Board of Directors on matters affecting public policy issues, and these objection procedures would not be applicable in such a case.

#### ***3.2.1 Grounds for Objection***

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An objection may be filed on any one of the following four grounds:

**String Confusion Objection** – The applied-for gTLD string is confusingly similar to an existing TLD or to another applied-for gTLD string in the same round of applications.

**Legal Rights Objection** – The applied-for gTLD string infringes the existing legal rights of the objector.

**[Limited Public Interest Objection]<sup>±</sup>** – The applied-for gTLD string is contrary to generally accepted legal norms of morality and public order that are recognized under principles of international law.

**Community Objection** – There is substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted.

The rationales for these objection grounds are discussed in the final report of the ICANN policy development process for new gTLDs. For more information on this process, see <http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-part-08aug07.htm>.

### 3.21.2 Standing to Object

Objectors must satisfy standing requirements to have their objections considered. As part of the dispute proceedings, all objections will be reviewed by a panel of experts designated by the applicable Dispute Resolution Service Provider (DRSP) to determine whether the objector has standing to object. Standing requirements for the four objection grounds are:

Objection ground	Who may object
String confusion	Existing TLD operator or gTLD applicant in current round
Legal rights	Rightholders
[Limited public interest] <sup>±</sup>	No limitations on who may file – however, subject to a “quick look” designed for early conclusion of frivolous and/or abusive objections
Community	Established institution associated with a clearly delineated community

#### 3.21.2.1 String Confusion Objection

Two types of entities have standing to object:

<sup>±</sup> “[Limited Public Interest Objection]” here replaces what was termed a “Morality and Public Order Objection” in previous versions of the Guidebook. This term is subject to community consultation and revision and is used in brackets throughout. The details of this objection are described to provide applicants with an understanding of this objection basis, and may be revised based on further community consultation before the Guidebook is approved by the Board and the New gTLD Program is launched.

- An existing TLD operator may file a string confusion objection to assert string confusion between an applied-for gTLD and the TLD that it currently operates.
- Any gTLD applicant in this application round may file a string confusion objection to assert string confusion between an applied-for gTLD and the gTLD for which it has applied, where string confusion between the two applicants has not already been found in the Initial Evaluation. That is, an applicant does not have standing to object to another application with which it is already in a contention set as a result of the Initial Evaluation.

In the case where an existing TLD operator successfully asserts string confusion with an applicant, the application will be rejected.

In the case where a gTLD applicant successfully asserts string confusion with another applicant, the only possible outcome is for both applicants to be placed in a contention set and to be referred to a contention resolution procedure (refer to Module 4, String Contention Procedures). If an objection by one gTLD applicant to another gTLD application is unsuccessful, the applicants may both move forward in the process without being considered in direct contention with one another.

### 3.21.2.2 *Legal Rights Objection*

A rightsholder has standing to file a legal rights objection. The source and documentation of the existing legal rights the objector is claiming (which may include either registered or unregistered trademarks) are infringed by the applied-for gTLD must be included in the filing.

An intergovernmental organization (IGO) is eligible to file a legal rights objection if it meets the criteria for registration of a .INT domain name<sup>2</sup>:

- a) An international treaty between or among national governments must have established the organization; and
- b) The organization that is established must be widely considered to have independent international legal personality and must be the subject of and governed by international law.

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<sup>2</sup> See also <http://www.iana.org/domains/int/policy/>.

The specialized agencies of the UN and the organizations having observer status at the UN General Assembly are also recognized as meeting the criteria.

### 3.21.2.3 **Limited Public Interest Objection**

Anyone may file a **Limited Public Interest Objection**. Due to the inclusive standing base, however, objectors are subject to a “quick look” procedure designed to identify and eliminate frivolous and/or abusive objections. An objection found to be manifestly unfounded and/or an abuse of the right to object may be dismissed at any time.

A **Limited Public Interest objection** would be manifestly unfounded if it did not fall within one of the categories that have been defined as the grounds for such an objection (see subsection 3.54.3).

A **Limited Public Interest objection** that is manifestly unfounded may also be an abuse of the right to object. An objection may be framed to fall within one of the accepted categories for **Limited Public Interest objections**, but other facts may clearly show that the objection is abusive. For example, multiple objections filed by the same or related parties against a single applicant may constitute harassment of the applicant, rather than a legitimate defense of legal norms that are recognized under general principles of international law. An objection that attacks the applicant, rather than the applied-for string, could be an abuse of the right to object.<sup>3</sup>

The quick look is the Panel’s first task, after its appointment by the DRSP and is a review on the merits of the objection. The dismissal of an objection that is manifestly unfounded and/or an abuse of the right to object would be an Expert

<sup>3</sup> The jurisprudence of the European Court of Human Rights offers specific examples of how the term “manifestly ill-founded” has been interpreted in disputes relating to human rights. Article 35(3) of the European Convention on Human Rights provides: “The Court shall declare inadmissible any individual application submitted under Article 34 which it considers incompatible with the provisions of the Convention or the protocols thereto, manifestly ill-founded, or an abuse of the right of application.” The ECHR renders reasoned decisions on admissibility, pursuant to Article 35 of the Convention. (Its decisions are published on the Court’s website <http://www.echr.coe.int>.) In some cases, the Court briefly states the facts and the law and then announces its decision, without discussion or analysis. E.g., Decision as to the Admissibility of Application No. 34328/96 by Egbert Peree against the Netherlands (1998). In other cases, the Court reviews the facts and the relevant legal rules in detail, providing an analysis to support its conclusion on the admissibility of an application. Examples of such decisions regarding applications alleging violations of Article 10 of the Convention (freedom of expression) include: *Décision sur la recevabilité de la requête no 65831/01 présentée par Roger Garaudy contre la France* (2003); *Décision sur la recevabilité de la requête no 65297/01 présentée par Eduardo Fernando Alves Costa contre le Portugal* (2004).

The jurisprudence of the European Court of Human Rights also provides examples of the abuse of the right of application being sanctioned, in accordance with ECHR Article 35(3). See, for example, *Décision partielle sur la recevabilité de la requête no 61164/00 présentée par Gérard Duringer et autres contre la France et de la requête no 18589/02 contre la France* (2003).

Determination, rendered in accordance with Article 21 of the New gTLD Dispute Resolution Procedure.

In the case where the quick look review does lead to the dismissal of the objection, the proceedings that normally follow the initial submissions (including payment of the full advance on costs) will not take place, and it is currently contemplated that the filing fee paid by the applicant would be refunded, pursuant to Procedure Article 14(e).

### **3.21.2.4 Community Objection**

Established institutions associated with clearly delineated communities are eligible to file a community objection. The community named by the objector must be a community strongly associated with the applied-for gTLD string in the application that is the subject of the objection. To qualify for standing for a community objection, the objector must prove both of the following:

***It is an established institution*** – Factors that may be considered in making this determination include, but are not limited to:

- Level of global recognition of the institution;
- Length of time the institution has been in existence; and
- Public historical evidence of its existence, such as the presence of [a](#) formal charter or national or international registration, or validation by a government, inter-governmental organization, or treaty. The institution must not have been established solely in conjunction with the gTLD application process.

***It has an ongoing relationship with a clearly delineated community*** – Factors that may be considered in making this determination include, but are not limited to:

- The presence of mechanisms for participation in activities, membership, and leadership;
- Institutional purpose related to the benefit of the associated community;
- Performance of regular activities that benefit the associated community; and
- The level of formal boundaries around the community.

The panel will perform a balancing of the factors listed above, as well as other relevant information, in making its determination. It is not expected that an objector must demonstrate satisfaction of each and every factor considered in order to satisfy the standing requirements.

### **3.21.3** *Dispute Resolution Service Providers*

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To trigger a dispute resolution proceeding, an objection must be filed by the posted deadline date, directly with the appropriate DRSP for each objection ground.

- The International Centre for Dispute Resolution has agreed in principle to administer disputes brought pursuant to string confusion objections.
- The Arbitration and Mediation Center of the World Intellectual Property Organization has agreed in principle to administer disputes brought pursuant to legal rights objections.
- The International Center of Expertise of the International Chamber of Commerce has agreed in principle to administer disputes brought pursuant to **[Limited Public Interest]** and Community Objections.

ICANN selected DRSPs on the basis of their relevant experience and expertise, as well as their willingness and ability to administer dispute proceedings in the new gTLD Program. The selection process began with a public call for expressions of interest<sup>4</sup> followed by dialogue with those candidates who responded. The call for expressions of interest specified several criteria for providers, including established services, subject matter expertise, global capacity, and operational capabilities. An important aspect of the selection process was the ability to recruit panelists who will engender the respect of the parties to the dispute.

### **3.21.4** *Options in the Event of Objection*

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Applicants whose applications are the subject of an objection have the following options:

The applicant can work to reach a settlement with the objector, resulting in withdrawal of the objection or the application;

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<sup>4</sup> See <http://www.icann.org/en/announcements/announcement-21dec07.htm>.

The applicant can file a response to the objection and enter the dispute resolution process (refer to Section 3.2); or

The applicant can withdraw, in which case the objector will prevail by default and the application will not proceed further.

If for any reason the applicant does not file a response to an objection, the objector will prevail by default.

### **3.21.5** *Independent Objector*

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A formal objection to a gTLD application may also be filed by the Independent Objector (IO). The IO does not act on behalf of any particular persons or entities, but acts solely in the best interests of the public who use the global Internet.

In light of this public interest goal, the Independent Objector is limited to filing objections on the grounds of ~~Limited Public Interest~~ and Community.

Neither ICANN staff nor the ICANN Board of Directors has authority to direct or require the IO to file or not file any particular objection. If the IO determines that an objection should be filed, he or she will initiate and prosecute the objection in the public interest.

**Mandate and Scope** - The IO may file objections against “highly objectionable” gTLD applications to which no objection has been filed. The IO is limited to filing two types of objections: (1) ~~Limited Public Interest objections~~ and (2) Community objections. The IO is granted standing to file objections on these enumerated grounds, notwithstanding the regular standing requirements for such objections (see subsection 3.1.2).

The IO may file a ~~Limited Public Interest objection~~ against an application even if a Community objection has been filed, and vice versa.

The IO may file an objection against an application, notwithstanding the fact that a String Confusion objection or a Legal Rights objection was filed.

Absent extraordinary circumstances, the IO is not permitted to file an objection to an application where an objection has already been filed on the same ground.

The IO may consider public comment when making an independent assessment whether an objection is warranted. The IO will have access to [application comments received during the comment period](#)~~from the appropriate time period, running through the initial~~

~~Evaluation period until the close of the deadline for the IO to submit an objection.~~

~~In light of the public interest goal noted above, the IO shall not object to an application unless at least one comment in opposition to the application is made in the public sphere.~~

**Selection** – The IO will be selected by ICANN, through an open and transparent process, and retained as an independent consultant. The Independent Objector will be an individual with considerable experience and respect in the Internet community, unaffiliated with any gTLD applicant.

Although recommendations for IO candidates from the community are welcomed, the IO must be and remain independent and unaffiliated with any of the gTLD applicants. The various rules of ethics for judges and international arbitrators provide models for the IO to declare and maintain his/her independence.

The IO's (renewable) tenure is limited to the time necessary to carry out his/her duties in connection with a single round of gTLD applications.

**Budget and Funding** – The IO's budget would comprise two principal elements: (a) salaries and operating expenses, and (b) dispute resolution procedure costs – both of which should be funded from the proceeds of new gTLD applications.

As an objector in dispute resolution proceedings, the IO is required to pay filing and administrative fees, as well as advance payment of costs, just as all other objectors are required to do. Those payments will be refunded by the DRSP in cases where the IO is the prevailing party.

In addition, the IO will incur various expenses in presenting objections before DRSP panels that will not be refunded, regardless of the outcome. These expenses include the fees and expenses of outside counsel (if retained) and the costs of legal research or factual investigations.

### **3.32** *Filing Procedures*

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The information included in this section provides a summary of procedures for filing:

- Objections; and
- Responses to objections.

For a comprehensive statement of filing requirements applicable generally, refer to the New gTLD Dispute Resolution Procedure (“Procedure”) included as an attachment to this module. In the event of any discrepancy between the information presented in this module and the Procedure, the Procedure shall prevail.

Note that the rules and procedures of each DRSP specific to each objection ground must also be followed.

- For a String Confusion Objection, the applicable DRSP Rules are the ICDR Supplementary Procedures for ICANN’s New gTLD Program. These rules are available in draft form and have been posted along with this module.
- For a Legal Rights Objection, the applicable DRSP Rules are the WIPO Rules for New gTLD Dispute Resolution. These rules are available in draft form and have been posted along with this module.
- For a ~~Limited Public Interest Objection~~, the applicable DRSP Rules are the Rules for Expertise of the International Chamber of Commerce.<sup>5</sup>
- For a Community Objection, ~~Objection~~, the applicable DRSP Rules are the Rules for Expertise of the International Chamber of Commerce.<sup>6</sup>

### 3.32.1 Objection Filing Procedures

The procedures outlined in this subsection must be followed by any party wishing to file a formal objection to an application that has been posted by ICANN. Should an applicant wish to file a formal objection to another gTLD application, it would follow these same procedures.

- All objections must be filed electronically with the appropriate DRSP by the posted deadline date. Objections will not be accepted by the DRSPs after this date.
- All objections must be filed in English.
- Each objection must be filed separately. An objector wishing to object to several applications

<sup>5</sup> See <http://www.iccwbo.org/court/expertise/id4379/index.html>

<sup>6</sup> *Ibid.*

must file a separate objection and pay the accompanying filing fees for each application that is the subject of an objection. If an objector wishes to object to an application on more than one ground, the objector must file separate objections and pay the accompanying filing fees for each objection ground.

Each objection filed by an objector must include:

- The name and contact information of the objector.
- A statement of the objector's basis for standing; that is, why the objector believes it meets the standing requirements to object.
- A description of the basis for the objection, including:
  - A statement giving the specific ground upon which the objection is being filed.
  - A detailed explanation of the validity of the objection and why it should be upheld.
- Copies of any documents that the objector considers to be a basis for the objection.

Objections are limited to 5000 words or 20 pages, whichever is less, excluding attachments.

An objector must provide copies of all submissions to the DRSP associated with the objection proceedings to the applicant.

~~ICANN and/or the DRSPs will publish, and regularly update, a list on its website identifying all objections as they are filed and ICANN is notified. ICANN will post on its website a notice of all objections filed once the objection filing period has closed.~~

### **3.32.2 Objection Filing Fees**

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At the time an objection is filed, the objector is required to pay a filing fee in the amount set and published by the relevant DRSP. If the filing fee is not paid, the DRSP will dismiss the objection without prejudice. See Section 1.5 of Module 1 regarding fees.

Funding from ICANN for objection filing fees, as well as for advance payment of costs (see subsection 3.4.7 below) is available to the At-Large Advisory Committee (ALAC). Funding for ALAC objection filing and dispute resolution

fees is contingent on publication by ALAC of their approved process for considering and making objections. At a minimum, the process for objecting to a gTLD application will require: bottom-up development of potential objections, discussion and approval of objections at the RALO level, and a process for consideration and approval of the objection by the At-Large Advisory Committee.

Funding from ICANN for objection filing fees, as well as for advance payment of costs, is available to individual national governments in the amount of USD 50,000 with the guarantee that a minimum of one objection per government will be fully funded by ICANN where requested. ICANN will develop a procedure for application and disbursement of funds.

### **3.32.3 Response Filing Procedures**

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Upon notification that ICANN has published the list of all objections filed (refer to subsection 3.32.1), the DRSPs will notify the parties that responses must be filed within 30 calendar days of receipt of that notice. DRSPs will not accept late responses. Any applicant that fails to respond to an objection within the 30-day response period will be in default, which will result in the objector prevailing.

- All responses must be filed in English.
- Each response must be filed separately. That is, an applicant responding to several objections must file a separate response and pay the accompanying filing fee to respond to each objection.
- Responses must be filed electronically.

Each response filed by an applicant must include:

- The name and contact information of the applicant.
- A point-by-point response to the claims made by the objector.
- Any copies of documents that it considers to be a basis for the response.

Responses are limited to 5000 words or 20 pages, whichever is less, excluding attachments.

Each applicant must provide copies of all submissions to the DRSP associated with the objection proceedings to the objector.

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### **3.32.4** *Response Filing Fees*

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At the time an applicant files its response, it is required to pay a filing fee in the amount set and published by the relevant DRSP, which will be the same as the filing fee paid by the objector. If the filing fee is not paid, the response will be disregarded, which will result in the objector prevailing.

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### **3.43** *Objection Processing Overview*

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The information below provides an overview of the process by which DRSPs administer dispute proceedings that have been initiated. For comprehensive information, please refer to the New gTLD Dispute Resolution Procedure (included as an attachment to this module).

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#### **3.43.1** *Administrative Review*

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Each DRSP will conduct an administrative review of each objection for compliance with all procedural rules within 14 calendar days of receiving the objection. Depending on the number of objections received, the DRSP may ask ICANN for a short extension of this deadline.

If the DRSP finds that the objection complies with procedural rules, the objection will be deemed filed, and the proceedings will continue. If the DRSP finds that the objection does not comply with procedural rules, the DRSP will dismiss the objection and close the proceedings without prejudice to the objector's right to submit a new objection that complies with procedural rules. The DRSP's review or rejection of the objection will not interrupt the time limit for filing an objection.

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#### **3.43.2** *Consolidation of Objections*

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Once the DRSP receives and processes all objections, at its discretion the DRSP may elect to consolidate certain objections. The DRSP shall endeavor to decide upon consolidation prior to issuing its notice to applicants that the response should be filed and, where appropriate, shall inform the parties of the consolidation in that notice.

An example of a circumstance in which consolidation might occur is multiple objections to the same application based on the same ground.

In assessing whether to consolidate objections, the DRSP will weigh the efficiencies in time, money, effort, and consistency that may be gained by consolidation against the prejudice or inconvenience consolidation may cause. The DRSPs will endeavor to have all objections resolved on a similar timeline. It is intended that no sequencing of objections will be established.

New gTLD applicants and objectors also will be permitted to propose consolidation of objections, but it will be at the DRSP's discretion whether to agree to the proposal.

ICANN continues to strongly encourage all of the DRSPs to consolidate matters whenever practicable.

### **3.43.3** *Mediation*

---

The parties to a dispute resolution proceeding are encouraged—but not required—to participate in mediation aimed at settling the dispute. Each DRSP has experts who can be retained as mediators to facilitate this process, should the parties elect to do so, and the DRSPs will communicate with the parties concerning this option and any associated fees.

If a mediator is appointed, that person may not serve on the panel constituted to issue an expert determination in the related dispute.

There are no automatic extensions of time associated with the conduct of negotiations or mediation. The parties may submit joint requests for extensions of time to the DRSP according to its procedures, and the DRSP or the panel, if appointed, will decide whether to grant the requests, although extensions will be discouraged. Absent exceptional circumstances, the parties must limit their requests for extension to 30 calendar days.

The parties are free to negotiate without mediation at any time, or to engage a mutually acceptable mediator of their own accord.

### **3.43.4** *Selection of Expert Panels*

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A panel will consist of appropriately qualified experts appointed to each proceeding by the designated DRSP. Experts must be independent of the parties to a dispute resolution proceeding. Each DRSP will follow its adopted procedures for requiring such independence, including procedures for challenging and replacing an expert for lack of independence.

There will be one expert in proceedings involving a string confusion objection.

There will be one expert, or, if all parties agree, three experts with relevant experience in intellectual property rights disputes in proceedings involving an existing legal rights objection.

There will be three experts recognized as eminent jurists of international reputation, with expertise in relevant fields as appropriate, in proceedings involving a ~~¶~~Limited Public Interest objection~~¶~~.

There will be one expert in proceedings involving a community objection.

Neither the experts, the DRSP, ICANN, nor their respective employees, directors, or consultants will be liable to any party in any action for damages or injunctive relief for any act or omission in connection with any proceeding under the dispute resolution procedures.

### **3.43.5 Adjudication**

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The panel may decide whether the parties shall submit any written statements in addition to the filed objection and response, and may specify time limits for such submissions.

In order to achieve the goal of resolving disputes rapidly and at reasonable cost, procedures for the production of documents shall be limited. In exceptional cases, the panel may require a party to produce additional evidence.

Disputes will usually be resolved without an in-person hearing. The panel may decide to hold such a hearing only in extraordinary circumstances.

### **3.43.6 Expert Determination**

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The DRSPs' final expert determinations will be in writing and will include:

- A summary of the dispute and findings;
- An identification of the prevailing party; and
- The reasoning upon which the expert determination is based.

Unless the panel decides otherwise, each DRSP will publish all decisions rendered by its panels in full on its website.

The findings of the panel will be considered an expert determination and advice that ICANN will accept within the dispute resolution process.

### **3.43.7 Dispute Resolution Costs**

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Before acceptance of objections, each DRSP will publish a schedule of costs or statement of how costs will be calculated for the proceedings that it administers under this procedure. These costs cover the fees and expenses of the members of the panel and the DRSP's administrative costs.

ICANN expects that string confusion and legal rights objection proceedings will involve a fixed amount charged by the panelists while ~~†~~Limited Public Interest~~‡~~ and community objection proceedings will involve hourly rates charged by the panelists.

Within ten (10) business days of constituting the panel, the DRSP will estimate the total costs and request advance payment in full of its costs from both the objector and the applicant. Each party must make its advance payment within ten (10) days of receiving the DRSP's request for payment and submit to the DRSP evidence of such payment. The respective filing fees paid by the parties will be credited against the amounts due for this advance payment of costs.

The DRSP may revise its estimate of the total costs and request additional advance payments from the parties during the resolution proceedings.

Additional fees may be required in specific circumstances; for example, if the DRSP receives supplemental submissions or elects to hold a hearing.

If an objector fails to pay these costs in advance, the DRSP will dismiss its objection and no fees paid by the objector will be refunded.

If an applicant fails to pay these costs in advance, the DSRP will sustain the objection and no fees paid by the applicant will be refunded.

After the hearing has taken place and the panel renders its expert determination, the DRSP will refund the advance payment of costs to the prevailing party.

### **3.54 Dispute Resolution Principles (Standards)**

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Each panel will use appropriate general principles (standards) to evaluate the merits of each objection. The principles for adjudication on each type of objection are specified in the paragraphs that follow. The panel may also refer to other relevant rules of international law in connection with the standards.

The objector bears the burden of proof in each case.

The principles outlined below are subject to evolution based on ongoing consultation with DRSPs, legal experts, and the public.

### **3.54.1 String Confusion Objection**

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A DRSP panel hearing a string confusion objection will consider whether the applied-for gTLD string is likely to result in string confusion. String confusion exists where a string so nearly resembles another that it is likely to deceive or cause confusion. For a likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the average, reasonable Internet user. Mere association, in the sense that the string brings another string to mind, is insufficient to find a likelihood of confusion.

### **3.54.2 Legal Rights Objection**

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In interpreting and giving meaning to GNSO Recommendation 3 (“Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law”), a DRSP panel of experts presiding over a legal rights objection will determine whether the potential use of the applied-for gTLD by the applicant takes unfair advantage of the distinctive character or the reputation of the objector’s registered or unregistered trademark or service mark (“mark”) or IGO name or acronym (as identified in the treaty establishing the organization), or unjustifiably impairs the distinctive character or the reputation of the objector’s mark or IGO name or acronym, or otherwise creates an impermissible likelihood of confusion between the applied-for gTLD and the objector’s mark or IGO name or acronym.

In the case where the objection is based on trademark rights, the panel will consider the following non-exclusive factors:

1. Whether the applied-for gTLD is identical or similar, including in appearance, phonetic sound, or meaning, to the objector’s existing mark.

2. Whether the objector's acquisition and use of rights in the mark has been bona fide.
3. Whether and to what extent there is recognition in the relevant sector of the public of the sign corresponding to the gTLD, as the mark of the objector, of the applicant or of a third party.
4. Applicant's intent in applying for the gTLD, including whether the applicant, at the time of application for the gTLD, had knowledge of the objector's mark, or could not have reasonably been unaware of that mark, and including whether the applicant has engaged in a pattern of conduct whereby it applied for or operates TLDs or registrations in TLDs which are identical or confusingly similar to the marks of others.
5. Whether and to what extent the applicant has used, or has made demonstrable preparations to use, the sign corresponding to the gTLD in connection with a bona fide offering of goods or services or a bona fide provision of information in a way that does not interfere with the legitimate exercise by the objector of its mark rights.
6. Whether the applicant has marks or other intellectual property rights in the sign corresponding to the gTLD, and, if so, whether any acquisition of such a right in the sign, and use of the sign, has been bona fide, and whether the purported or likely use of the gTLD by the applicant is consistent with such acquisition or use.
7. Whether and to what extent the applicant has been commonly known by the sign corresponding to the gTLD, and if so, whether any purported or likely use of the gTLD by the applicant is consistent therewith and bona fide.
8. Whether the applicant's intended use of the gTLD would create a likelihood of confusion with the objector's mark as to the source, sponsorship, affiliation, or endorsement of the gTLD.

In the case where a legal rights objection has been filed by an IGO, the panel will consider the following non-exclusive factors:

1. Whether the applied-for gTLD is identical or similar, including in appearance, phonetic sound or meaning, to the name or acronym of the objecting IGO;

2. Historical coexistence of the IGO and the applicant's use of a similar name or acronym. Factors considered may include:
  - a. Level of global recognition of both entities;
  - b. Length of time the entities have been in existence;
  - c. Public historical evidence of their existence, which may include whether the objecting IGO has communicated its name or abbreviation under Article 6*ter* of the Paris Convention for the Protection of Industrial Property.
3. Whether and to what extent the applicant has used, or has made demonstrable preparations to use, the sign corresponding to the TLD in connection with a bona fide offering of goods or services or a bona fide provision of information in a way that does not interfere with the legitimate exercise of the objecting IGO's name or acronym;
4. Whether and to what extent the applicant has been commonly known by the sign corresponding to the applied-for gTLD, and if so, whether any purported or likely use of the gTLD by the applicant is consistent therewith and bona fide; and
5. Whether the applicant's intended use of the applied-for gTLD would create a likelihood of confusion with the objecting IGO's name or acronym as to the source, sponsorship, affiliation, or endorsement of the TLD.

### 3.54.3 *{Limited Public Interest Objection}*

An expert panel hearing a *{Limited Public Interest objection}* will consider whether the applied-for gTLD string is contrary to general principles of international law for morality and public order.

Examples of instruments containing such general principles include:

- The Universal Declaration of Human Rights (UDHR)
- The International Covenant on Civil and Political Rights (ICCPR)
- The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

- The International Convention on the Elimination of All Forms of Racial Discrimination
- Declaration on the Elimination of Violence against Women
- The International Covenant on Economic, Social, and Cultural Rights
- The Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment
- The International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families
- Slavery Convention
- Convention on the Prevention and Punishment of the Crime of Genocide
- Convention on the Rights of the Child

Note that these are included to serve as examples, rather than an exhaustive list. It should be noted that these instruments vary in their ratification status. Additionally, states may limit the scope of certain provisions through reservations and declarations indicating how they will interpret and apply certain provisions. National laws not based on principles of international law are not a valid ground for a [Limited Public Interest objection](#).

Under these principles, everyone has the right to freedom of expression, but the exercise of this right carries with it special duties and responsibilities. Accordingly, certain limited restrictions may apply.

The grounds upon which an applied-for gTLD string may be considered contrary to generally accepted legal norms relating to morality and public order that are recognized under principles of international law are:

- Incitement to or promotion of violent lawless action;
- Incitement to or promotion of discrimination based upon race, color, gender, ethnicity, religion or national origin, [or other similar types of discrimination that violate generally accepted legal norms recognized under principles of international law](#);
- Incitement to or promotion of child pornography or other sexual abuse of children; or

- A determination that an applied-for gTLD string would be contrary to specific principles of international law as reflected in relevant international instruments of law.

The panel will conduct their analysis on the basis of the applied-for gTLD string itself. The panel may, if needed, use as additional context the intended purpose of the TLD as stated in the application.

#### 3.54.4 Community Objection

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The four tests described here will enable a DRSP panel to determine whether there is substantial opposition from a significant portion of the community to which the string may be targeted. For an objection to be successful, the objector must prove that:

- The community invoked by the objector is a clearly delineated community; and
- Community opposition to the application is substantial; and
- There is a strong association between the community invoked and the applied-for gTLD string; and
- ~~The application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted. There is a likelihood of material detriment to the community named by the objector, and the broader Internet community, if the gTLD application is approved.~~

Each of these tests is described in further detail below.

**Community** – The objector must prove that the community expressing opposition can be regarded as a clearly delineated community. A panel could balance a number of factors to determine this, including but not limited to:

- The level of public recognition of the group as a community at a local and/or global level;
- The level of formal boundaries around the community and what persons or entities are considered to form the community;
- The length of time the community has been in existence;

- The global distribution of the community (this may not apply if the community is territorial); and
- The number of people or entities that make up the community.

If opposition by a number of people/entities is found, but the group represented by the objector is not determined to be a clearly delineated community, the objection will fail.

**Substantial Opposition** – The objector must prove substantial opposition within the community it has identified itself as representing. A panel could balance a number of factors to determine whether there is substantial opposition, including but not limited to:

- Number of expressions of opposition relative to the composition of the community;
- The representative nature of entities expressing opposition;
- Level of recognized stature or weight among sources of opposition;
- Distribution or diversity among sources of expressions of opposition, including:
  - Regional
  - Subsectors of community
  - Leadership of community
  - Membership of community
- Historical defense of the community in other contexts; and
- Costs incurred by objector in expressing opposition, including other channels the objector may have used to convey opposition.

If some opposition within the community is determined, but it does not meet the standard of substantial opposition, the objection will fail.

**Targeting** – The objector must prove a strong association between the applied-for gTLD string and the community represented by the objector. Factors that could be balanced by a panel to determine this include but are not limited to:

- Statements contained in application;

- Other public statements by the applicant;
- Associations by the public.

If opposition by a community is determined, but there is no strong association between the community and the applied-for gTLD string, the objection will fail.

**Detriment** – The objector must prove that the application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted. its associated community and the broader Internet community. An allegation of detriment that consists only of the applicant being delegated the string instead of the objector will not be sufficient for a finding of material detriment.

Factors that could be used by a panel in making this determination include but are not limited to:

- Nature and extent of damage to the reputation of the community represented by the objector that would result from the applicant's operation of the applied-for gTLD string;
- Evidence that the applicant is not acting or does not intend to act in accordance with the interests of the community or of users more widely, including evidence that the applicant has not proposed or does not intend to institute effective security protection for user interests;
- Interference with the core activities of the community that would result from the applicant's operation of the applied-for gTLD string;
- Dependence of the community represented by the objector on the DNS for its core activities;
- Nature and extent of concrete or economic damage to the community represented by the objector, ~~and the broader Internet community~~ that would result from the applicant's operation of the applied-for gTLD string; and
- Level of certainty that alleged detrimental outcomes would occur.

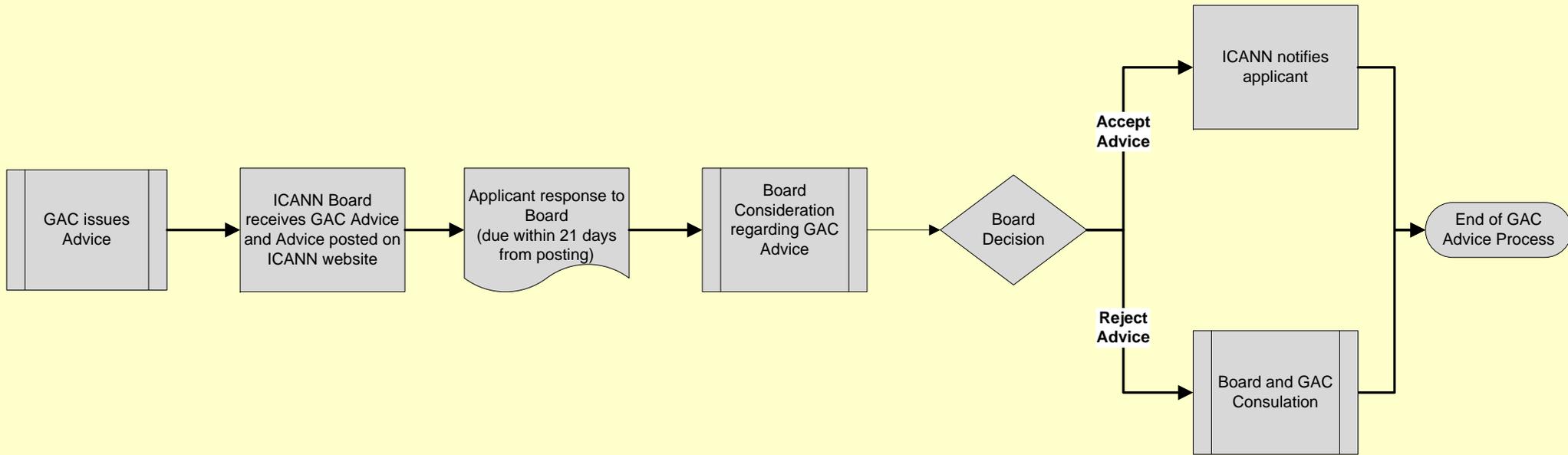
If opposition by a community is determined, but there is no likelihood of material detriment to the targeted community resulting from the applicant's operation of the applied-for gTLD, the objection will fail.

The objector must meet all four tests in the standard for the objection to prevail.<sup>7</sup>

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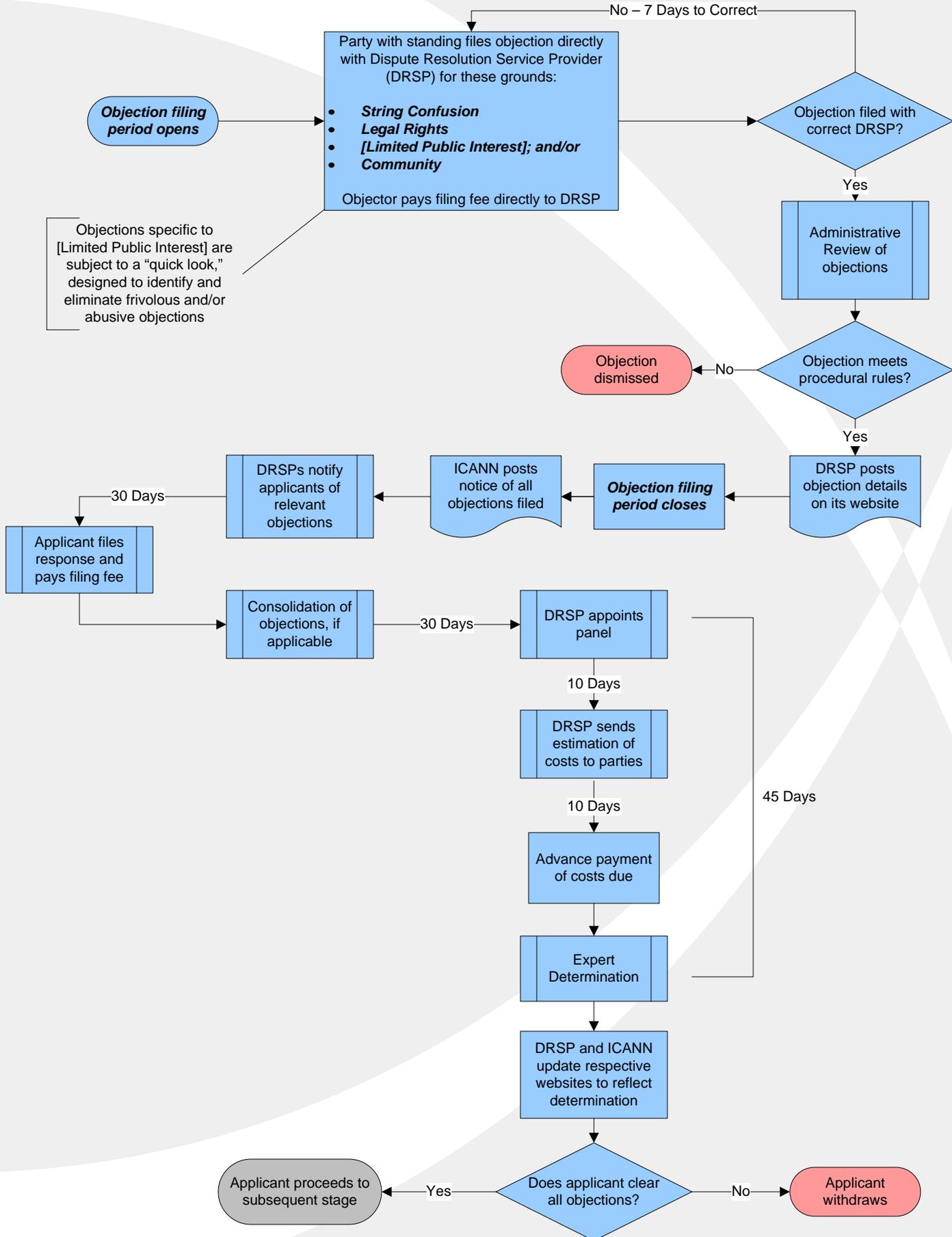
<sup>7</sup> ~~After careful consideration of community feedback on this section, the complete defense has been eliminated. However, in order to prevail in a community objection, the objector must prove an elevated level of likely detriment.~~

# Draft – New gTLD Program - GAC Advice on New gTLDs



Note: Process depicts scenario in which GAC issues consensus advice that an application should not proceed

# DRAFT - New gTLD Program – Objection and Dispute Resolution



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# *Attachment to Module 3*

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## *New gTLD Dispute Resolution Procedure*

These Procedures were designed with an eye toward timely and efficient dispute resolution. As part of the New gTLD Program, these Procedures apply to all proceedings administered by each of the dispute resolution service providers (DRSP). Each of the DRSPs has a specific set of rules that will also apply to such proceedings.

## **NEW gTLD DISPUTE RESOLUTION PROCEDURE**

### **Article 1. ICANN's New gTLD Program**

- (a) The Internet Corporation for Assigned Names and Numbers ("ICANN") has implemented a program for the introduction of new generic Top-Level Domain Names ("gTLDs") in the internet. There will be a succession of rounds, during which applicants may apply for new gTLDs, in accordance with terms and conditions set by ICANN.
- (b) The new gTLD program includes a dispute resolution procedure, pursuant to which disputes between a person or entity who applies for a new gTLD and a person or entity who objects to that gTLD are resolved in accordance with this New gTLD Dispute Resolution Procedure (the "Procedure").
- (c) Dispute resolution proceedings shall be administered by a Dispute Resolution Service Provider ("DRSP") in accordance with this Procedure and the applicable DRSP Rules that are identified in Article 4(b).
- (d) By applying for a new gTLD, an applicant accepts the applicability of this Procedure and the applicable DRSP's Rules that are identified in Article 4(b); by filing an objection to a new gTLD, an objector accepts the applicability of this Procedure and the applicable DRSP's Rules that are identified in Article 4(b). The parties cannot derogate from this Procedure without the express approval of ICANN and from the applicable DRSP Rules without the express approval of the relevant DRSP.

### **Article 2. Definitions**

- (a) The "Applicant" or "Respondent" is an entity that has applied to ICANN for a new gTLD and that will be the party responding to the Objection.
- (b) The "Objector" is one or more persons or entities who have filed an objection against a new gTLD for which an application has been submitted.
- (c) The "Panel" is the panel of Experts, comprising one or three "Experts," that has been constituted by a DRSP in accordance with this Procedure and the applicable DRSP Rules that are identified in Article 4(b).
- (d) The "Expert Determination" is the decision upon the merits of the Objection that is rendered by a Panel in a proceeding conducted under this Procedure and the applicable DRSP Rules that are identified in Article 4(b).
- (e) The grounds upon which an objection to a new gTLD may be filed are set out in full in [Module 3 of the Applicant Guidebook](#). Such grounds are identified in this Procedure, and are based upon the Final Report on the Introduction of New Generic Top-Level Domains, dated 7 August 2007, issued by the ICANN Generic Names Supporting Organization (GNSO), as follows:
  - (i) "String Confusion Objection" refers to the objection that the string comprising the potential gTLD is confusingly similar to an existing top-level domain or another string applied for in the same round of applications.
  - (ii) "Existing Legal Rights Objection" refers to the objection that the string comprising the potential new gTLD infringes the existing legal rights of others

that are recognized or enforceable under generally accepted and internationally recognized principles of law.

- (iii) "~~Limited Public Interest Objection~~" refers to the objection that the string comprising the potential new gTLD is contrary to generally accepted legal norms relating to morality and public order that are recognized under ~~international~~ principles of international law.
  - (iv) "Community Objection" refers to the objection that there is substantial opposition to the application from a significant portion of the community to which the string may be explicitly or implicitly targeted.
- (f) "DRSP Rules" are the rules of procedure of a particular DRSP that have been identified as being applicable to objection proceedings under this Procedure.

### **Article 3. Dispute Resolution Service Providers**

The various categories of disputes shall be administered by the following DRSPs:

- (a) String Confusion Objections shall be administered by the International Centre for Dispute Resolution.
- (b) Existing Legal Rights Objections shall be administered by the Arbitration and Mediation Center of the World Intellectual Property Organization.
- (c) ~~Limited Public Interest Objections~~ shall be administered by the International Centre for Expertise of the International Chamber of Commerce.
- (d) Community Objections shall be administered by the International Centre for Expertise of the International Chamber of Commerce.

### **Article 4. Applicable Rules**

- (a) All proceedings before the Panel shall be governed by this Procedure and by the DRSP Rules that apply to a particular category of objection. The outcome of the proceedings shall be deemed an Expert Determination, and the members of the Panel shall act as experts.
- (b) The applicable DRSP Rules are the following:
  - (i) For a String Confusion Objection, the applicable DRSP Rules are the ICDR Supplementary Procedures for ICANN's New gTLD Program.
  - (ii) For an Existing Legal Rights Objection, the applicable DRSP Rules are the WIPO Rules for New gTLD Dispute Resolution.
  - (iii) For a ~~Limited Public Interest Objection~~, the applicable DRSP Rules are the Rules for Expertise of the International Chamber of Commerce.
  - (iv) For a Community Objection, Objection, the applicable DRSP Rules are the Rules for Expertise of the International Chamber of Commerce.
- (c) In the event of any discrepancy between this Procedure and the applicable DRSP Rules, this Procedure shall prevail.

- (d) The place of the proceedings, if relevant, shall be the location of the DRSP that is administering the proceedings.
- (e) In all cases, the Panel shall ensure that the parties are treated with equality, and that each party is given a reasonable opportunity to present its position.

**Article 5. Language**

- (a) The language of all submissions and proceedings under this Procedure shall be English.
- (b) Parties may submit supporting evidence in its original language, provided and subject to the authority of the Panel to determine otherwise, that such evidence is accompanied by a certified or otherwise official English translation of all relevant text.

**Article 6. Communications and Time Limits**

- (a) All communications by the Parties with the DRSPs and Panels must be submitted electronically. A Party that wishes to make a submission that is not available in electronic form (e.g., evidentiary models) shall request leave from the Panel to do so, and the Panel, in its sole discretion, shall determine whether to accept the non-electronic submission.
- (b) The DRSP, Panel, Applicant, and Objector shall provide copies to one another of all correspondence (apart from confidential correspondence between the Panel and the DRSP and among the Panel) regarding the proceedings.
- (c) For the purpose of determining the date of commencement of a time limit, a notice or other communication shall be deemed to have been received on the day that it is transmitted in accordance with paragraphs (a) and (b) of this Article.
- (d) For the purpose of determining compliance with a time limit, a notice or other communication shall be deemed to have been sent, made or transmitted if it is dispatched in accordance with paragraphs (a) and (b) of this Article prior to or on the day of the expiration of the time limit.
- (e) For the purpose of calculating a period of time under this Procedure, such period shall begin to run on the day following the day when a notice or other communication is received.
- (f) Unless otherwise stated, all time periods provided in the Procedure are calculated on the basis of calendar days

**Article 7. Filing of the Objection**

- (a) A person wishing to object to a new gTLD for which an application has been submitted may file an objection ("Objection"). Any Objection to a proposed new gTLD must be filed before the published closing date for the Objection Filing period.
- (b) The Objection must be filed with the appropriate DRSP, using a model form made available by that DRSP, with copies to ICANN and the Applicant.
- (c) The electronic addresses for filing Objections are the following:
  - (i) A String Confusion Objection must be filed at: [●].
  - (ii) An Existing Legal Rights Objection must be filed at: [●].

- (iii) A  ~~Limited Public Interest Objection~~ must be filed at: [●].
- (iv) A Community Objection must be filed at: [●].
- (d) All Objections must be filed separately:
  - (i) An Objector who wishes to object to an application on more than one ground must file separate objections with the appropriate DRSP(s).
  - (ii) An Objector who wishes to object to more than one gTLD must file separate objections to each gTLD with the appropriate DRSP(s).
- (e) If an Objection is filed with the wrong DRSP, that DRSP shall promptly notify the Objector ~~and the DRSP with whom the Objection was wrongly filed,~~ of the error and that DRSP shall not process the incorrectly filed Objection. The Objector may then cure the error by filing its Objection with the correct DRSP within seven (7) days of its receipt of the error notice, failing which the Objection shall be disregarded. If the Objection is filed with the correct DRSP within seven (7) days of its receipt of the error notice but after the lapse of the time for submitting an Objection stipulation by Article 7(a) of this Procedure, it shall be deemed to be within this time limit.

## **Article 8. Content of the Objection**

- (a) The Objection shall contain, *inter alia*, the following information:
  - (i) The names and contact information (address, telephone number, email address, etc.) of the Objector;
  - (ii) A statement of the Objector's basis for standing; and
  - (iii) A description of the basis for the Objection, including:
    - (aa) A statement of the ground upon which the Objection is being filed, as stated in Article 2(e) of this Procedure;
    - (bb) An explanation of the validity of the Objection and why the objection should be upheld.
- (b) The substantive portion of the Objection shall be limited to 5,000 words or 20 pages, whichever is less, excluding attachments. The Objector shall also describe and provide copies of any supporting or official documents upon which the Objection is based.
- (c) At the same time as the Objection is filed, the Objector shall pay a filing fee in the amount set in accordance with the applicable DRSP Rules and include evidence of such payment in the Objection. In the event that the filing fee is not paid within ten (10) days of the receipt of the Objection by the DRSP, the Objection shall be dismissed without prejudice.

## **Article 9. Administrative Review of the Objection**

- (a) The DRSP shall conduct an administrative review of the Objection for the purpose of verifying compliance with Articles 5-8 of this Procedure and the applicable DRSP Rules, and inform the Objector, the Applicant and ICANN of the result of its review within fourteen (14) days of its receipt of the Objection. The DRSP may extend this time limit for reasons explained in the notification of such extension.

- (b) If the DRSP finds that the Objection complies with Articles 5-8 of this Procedure and the applicable DRSP Rules, the DRSP shall confirm that the Objection shall be registered for processing.
- (c) If the DRSP finds that the Objection does not comply with Articles 5-8 of this Procedure and the applicable DRSP Rules, the DRSP shall have the discretion to request that any administrative deficiencies in the Objection be corrected within five (5) days. If the deficiencies in the Objection are cured within the specified period but after the lapse of the time limit for submitting an Objection stipulated by Article 7(a) of this Procedure, the Objection shall be deemed to be within this time limit.
- (d) If the DRSP finds that the Objection does not comply with Articles 5-8 of this Procedure and the applicable DRSP Rules, and the deficiencies in the Objection are not corrected within the period specified in Article 9(c), the DRSP shall dismiss the Objection and close the proceedings, without prejudice to the Objector's submission of a new Objection that complies with this Procedure, provided that the Objection is filed within the deadline for filing such Objections. The DRSP's review of the Objection shall not interrupt the running of the time limit for submitting an Objection stipulated by Article 7(a) of this Procedure.
- (e) Immediately upon registering an Objection for processing, pursuant to Article 9(b), the DRSP shall post the following information about the Objection on its website: (i) the proposed string to which the Objection is directed; (ii) the names of the Objector and the Applicant; (iii) the grounds for the Objection; and (iv) the dates of the DRSP's receipt of the Objection.

#### **Article 10. ICANN's Dispute Announcement**

- (a) Within thirty (30) days of the deadline for filing Objections in relation to gTLD applications in a given round, ICANN shall publish a document on its website identifying all of the admissible Objections that have been filed (the "Dispute Announcement"). ICANN shall also directly inform each DRSP of the posting of the Dispute Announcement.
- (b) ICANN shall monitor the progress of all proceedings under this Procedure and shall take steps, where appropriate, to coordinate with any DRSP in relation to individual applications for which objections are pending before more than one DRSP.

#### **Article 11. Response to the Objection**

- (a) Upon receipt of the Dispute Announcement, each DRSP shall promptly send a notice to: (i) each Applicant for a new gTLD to which one or more admissible Objections have been filed with that DRSP; and (ii) the respective Objector(s).
- (b) The Applicant shall file a response to each Objection (the "Response"). The Response shall be filed within thirty (30) days of the transmission of the notice by the DRSP pursuant to Article 11(a).
- (c) The Response must be filed with the appropriate DRSP, using a model form made available by that DRSP, with copies to ICANN and the Objector.
- (d) The Response shall contain, inter alia, the following information:
  - (i) The names and contact information (address, telephone number, email address, etc.) of the Applicant; and

- (ii) A point-by-point response to the statements made in the Objection.
- (e) The substantive portion of the Response shall be limited to 5,000 words or 20 pages, whichever is less, excluding attachments. The Applicant shall also describe and provide copies of any supporting or official documents upon which the Response is based.
- (f) At the same time as the Response is filed, the Applicant shall pay a filing fee in the amount set and published by the relevant DRSP (which shall be the same as the filing fee paid by the Objector) and include evidence of such payment in the Response. In the event that the filing fee is not paid within ten (10) days of the receipt of the Response by the DRSP, the Applicant shall be deemed to be in default, any Response disregarded and the Objection shall be deemed successful.
- (g) If the DRSP finds that the Response does not comply with Articles 11(c) and (d)(1) of this Procedure and the applicable DRSP Rules, the DRSP shall have the discretion to request that any administrative deficiencies in the Response be corrected within five (5) days. If the administrative deficiencies in the Response are cured within the specified period but after the lapse of the time limit for submitting a Response pursuant to this Procedure, the Response shall be deemed to be within this time limit.
- (g) If the Applicant fails to file a Response to the Objection within the 30-day time limit, the Applicant shall be deemed to be in default and the Objection shall be deemed successful. No fees paid by the Applicant will be refunded in case of default.

## **Article 12. Consolidation of Objections**

- (a) The DRSP is encouraged, whenever possible and practicable, and as may be further stipulated in the applicable DRSP Rules, to consolidate Objections, for example, when more than one Objector has filed an Objection to the same gTLD on the same grounds. The DRSP shall endeavor to decide upon consolidation prior to issuing its notice pursuant to Article 11(a) and, where appropriate, shall inform the parties of the consolidation in that notice.
- (b) If the DRSP itself has not decided to consolidate two or more Objections, any Applicant or Objector may propose the consolidation of Objections within seven (7) days of the notice given by the DRSP pursuant to Article 11(a). If, following such a proposal, the DRSP decides to consolidate certain Objections, which decision must be made within 14 days of the notice given by the DRSP pursuant to Article 11(a), the deadline for the Applicant's Response in the consolidated proceeding shall be thirty (30) days from the Applicant's receipt of the DRSP's notice of consolidation.
- (c) In deciding whether to consolidate Objections, the DRSP shall weigh the benefits (in terms of time, cost, consistency of decisions, etc.) that may result from the consolidation against the possible prejudice or inconvenience that the consolidation may cause. The DRSP's determination on consolidation shall be final and not subject to appeal.
- (d) Objections based upon different grounds, as summarized in Article 2(e), shall not be consolidated.

## **Article 13. The Panel**

- (a) The DRSP shall select and appoint the Panel of Expert(s) within thirty (30) days after receiving the Response.

- (b) Number and specific qualifications of Expert(s):
  - (i) There shall be one Expert in proceedings involving a String Confusion Objection.
  - (ii) There shall be one Expert or, if all of the Parties so agree, three Experts with relevant experience in intellectual property rights disputes in proceedings involving an Existing Legal Rights Objection.
  - (iii) There shall be three Experts recognized as eminent jurists of international reputation, one of whom shall be designated as the Chair. The Chair shall be of a nationality different from the nationalities of the Applicant and of the Objector, in proceedings involving a ~~Limited Public Interest Objection~~.
  - (iv) There shall be one Expert in proceedings involving a Community Objection.
- (c) All Experts acting under this Procedure shall be impartial and independent of the parties. The applicable DRSP Rules stipulate the manner by which each Expert shall confirm and maintain their impartiality and independence.
- (d) The applicable DRSP Rules stipulate the procedures for challenging an Expert and replacing an Expert.
- (e) Unless required by a court of law or authorized in writing by the parties, an Expert shall not act in any capacity whatsoever, in any pending or future proceedings, whether judicial, arbitral or otherwise, relating to the matter referred to expert determination under this Procedure.

#### **Article 14. Costs**

- (a) Each DRSP shall determine the costs for the proceedings that it administers under this Procedure in accordance with the applicable DRSP Rules. Such costs shall cover the fees and expenses of the members of the Panel, as well as the administrative fees of the DRSP (the "Costs").
- (b) Within ten (10) days of constituting the Panel, the DRSP shall estimate the total Costs and request the Objector and the Applicant/Respondent each to pay in advance the full amount of the Costs to the DRSP. Each party shall make its advance payment of Costs within ten (10) days of receiving the DRSP's request for payment and submit to the DRSP evidence of such payment. The respective filing fees paid by the Parties shall be credited against the amounts due for this advance payment of Costs.
- (c) The DRSP may revise its estimate of the total Costs and request additional advance payments from the parties during the proceedings.
- (d) Failure to make an advance payment of Costs:
  - (i) If the Objector fails to make the advance payment of Costs, its Objection shall be dismissed and no fees that it has paid shall be refunded.
  - (ii) If the Applicant fails to make the advance payment of Costs, the Objection will be deemed to have been sustained and no fees that the Applicant has paid shall be refunded.

- (e) Upon the termination of the proceedings, after the Panel has rendered its Expert Determination, the DRSP shall refund to the prevailing party, as determined by the Panel, its advance payment(s) of Costs.

### **Article 15. Representation and Assistance**

- (a) The parties may be represented or assisted by persons of their choice.
- (b) Each party or party representative shall communicate the name, contact information and function of such persons to ICANN, the DRSP and the other party (or parties in case of consolidation).

### **Article 16. Negotiation and Mediation**

- (a) The parties are encouraged, but not required, to participate in negotiations and/or mediation at any time throughout the dispute resolution process aimed at settling their dispute amicably.
- (b) Each DRSP shall be able to propose, if requested by the parties, a person who could assist the parties as mediator.
- (c) A person who acts as mediator for the parties shall not serve as an Expert in a dispute between the parties under this Procedure or any other proceeding under this Procedure involving the same gTLD.
- (d) The conduct of negotiations or mediation shall not, *ipso facto*, be the basis for a suspension of the dispute resolution proceedings or the extension of any deadline under this Procedure. Upon the joint request of the parties, the DRSP or (after it has been constituted) the Panel may grant the extension of a deadline or the suspension of the proceedings. Absent exceptional circumstances, such extension or suspension shall not exceed thirty (30) days and shall not delay the administration of any other Objection.
- (e) If, during negotiations and/or mediation, the parties agree on a settlement of the matter referred to the DRSP under this Procedure, the parties shall inform the DRSP, which shall terminate the proceedings, subject to the parties' payment obligation under this Procedure having been satisfied, and inform ICANN and the parties accordingly.

### **Article 17. Additional Written Submissions**

- (a) The Panel may decide whether the parties shall submit any written statements in addition to the Objection and the Response, and it shall fix time limits for such submissions.
- (b) The time limits fixed by the Panel for additional written submissions shall not exceed thirty (30) days, unless the Panel, having consulted the DRSP, determines that exceptional circumstances justify a longer time limit.

### **Article 18. Evidence**

In order to achieve the goal of resolving disputes over new gTLDs rapidly and at reasonable cost, procedures for the production of documents shall be limited. In exceptional cases, the Panel may require a party to provide additional evidence.

## **Article 19. Hearings**

- (a) Disputes under this Procedure and the applicable DRSP Rules will usually be resolved without a hearing.
- (b) The Panel may decide, on its own initiative or at the request of a party, to hold a hearing only in extraordinary circumstances.
- (c) In the event that the Panel decides to hold a hearing:
  - (i) The Panel shall decide how and where the hearing shall be conducted.
  - (ii) In order to expedite the proceedings and minimize costs, the hearing shall be conducted by videoconference if possible.
  - (iii) The hearing shall be limited to one day, unless the Panel decides, in exceptional circumstances, that more than one day is required for the hearing.
  - (iv) The Panel shall decide whether the hearing will be open to the public or conducted in private.

## **Article 20. Standards**

- (a) ~~For each category of Objection identified in Article 2(e),~~ The Panel shall apply the standards that have been defined by ICANN. ~~for each category of Objection, and identified in Article 2(e).~~
- (b) In addition, the Panel may refer to and base its findings upon the statements and documents submitted and any rules or principles that it determines to be applicable.
- (c) The Objector bears the burden of proving that its Objection should be sustained in accordance with the applicable standards.

## **Article 21. The Expert Determination**

- (a) The DRSP and the Panel shall make reasonable efforts to ensure that the Expert Determination is rendered within forty-five (45) days of the constitution of the Panel. In specific circumstances such as consolidated cases and in consultation with the DRSP, if significant additional documentation is requested by the Panel, a brief extension may be allowed.
- (b) The Panel shall submit its Expert Determination in draft form to the DRSP's scrutiny as to form before it is signed, unless such scrutiny is specifically excluded by the applicable DRSP Rules. The modifications proposed by the DRSP to the Panel, if any, shall address only the form of the Expert Determination. The signed Expert Determination shall be communicated to the DRSP, which in turn will communicate that Expert Determination to the Parties and ICANN.
- (c) When the Panel comprises three Experts, the Expert Determination shall be made by a majority of the Experts.
- (d) The Expert Determination shall be in writing, shall identify the prevailing party and shall state the reasons upon which it is based. The remedies available to an Applicant or an Objector pursuant to any proceeding before a Panel shall be limited to the success or dismissal of an Objection and to the refund by the DRSP to the prevailing party, as determined by the Panel in its Expert Determination, of its advance payment(s) of

Costs pursuant to Article 14(e) of this Procedure and any relevant provisions of the applicable DRSP Rules.

- (e) The Expert Determination shall state the date when it is made, and it shall be signed by the Expert(s). If any Expert fails to sign the Expert Determination, it shall be accompanied by a statement of the reason for the absence of such signature.
- (f) In addition to providing electronic copies of its Expert Determination, the Panel shall provide a signed hard copy of the Expert Determination to the DRSP, unless the DRSP Rules provide for otherwise.
- (g) Unless the Panel decides otherwise, the Expert Determination shall be published in full on the DRSP's website.

### **Article 22. Exclusion of Liability**

In addition to any exclusion of liability stipulated by the applicable DRSP Rules, neither the Expert(s), nor the DRSP and its employees, nor ICANN and its Board members, employees and consultants shall be liable to any person for any act or omission in connection with any proceeding conducted under this Procedure.

### **Article 23. Modification of the Procedure**

- (a) ICANN may from time to time, in accordance with its Bylaws, modify this Procedure.
- (b) The version of this Procedure that is applicable to a dispute resolution proceeding is the version that was in effect on the day when the relevant application for a new gTLD is submitted.



# Applicant Guidebook

## April 2011 Discussion Draft Module 4

Please note that this is a discussion draft only. Potential applicants should not rely on any of the proposed details of the new gTLD program as the program remains subject to further consultation and revision.

15 April 2011

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# Module 4

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## *String Contention Procedures*

This module describes situations in which contention over applied-for gTLD strings occurs, and the methods available to applicants for resolving such contention cases.

### *4.1 String Contention*

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String contention occurs when either:

1. Two or more applicants for an identical gTLD string successfully complete all previous stages of the evaluation and dispute resolution processes; or
2. Two or more applicants for similar gTLD strings successfully complete all previous stages of the evaluation and dispute resolution processes, and the similarity of the strings is identified as creating a probability of user confusion if more than one of the strings is delegated.

ICANN will not approve applications for proposed gTLD strings that are identical or that would result in user confusion, called contending strings. If either situation 1 or 2 above occurs, such applications will proceed to contention resolution through either community priority evaluation, in certain cases, or through an auction. Both processes are described in this module. A group of applications for contending strings is referred to as a contention set.

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

#### *4.1.1 Identification of Contention Sets*

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Contention sets are groups of applications containing identical or similar applied-for gTLD strings. Contention sets are identified during Initial Evaluation, following review of all applied-for gTLD strings. ICANN will publish preliminary contention sets once the String Similarity review is completed, and will update the contention sets as necessary during the evaluation and dispute resolution stages.

Applications for identical gTLD strings will be automatically assigned to a contention set. For example, if Applicant A and Applicant B both apply for .TLDSTRING, they will be identified as being in a contention set. Such testing for identical strings also takes into consideration the code point variants listed in any relevant IDN table. That is, two or more applicants whose applied-for strings or designated variants are variant strings according to an IDN table submitted to ICANN would be considered in direct contention with one another. For example, if one applicant applies for string A and another applies for string B, and strings A and B are variant TLD strings as defined in Module 1, then the two applications are in direct contention.

The String Similarity Panel will also review the entire pool of applied-for strings to determine whether the strings proposed in any two or more applications are so similar that they would create a probability of user confusion if allowed to coexist in the DNS. The panel will make such a determination for each pair of applied-for gTLD strings. The outcome of the String Similarity review described in Module 2 is the identification of contention sets among applications that have direct or indirect contention relationships with one another.

Two strings are in **direct contention** if they are identical or similar to one another. More than two applicants might be represented in a direct contention situation: if four different applicants applied for the same gTLD string, they would all be in direct contention with one another.

Two strings are in **indirect contention** if they are both in direct contention with a third string, but not with one another. The example that follows explains direct and indirect contention in greater detail.

In Figure 4-1, Strings A and B are an example of direct contention. Strings C and G are an example of indirect contention. C and G both contend with B, but not with one another. The figure as a whole is one contention set. A contention set consists of all applications that are linked by string contention to one another, directly or indirectly.

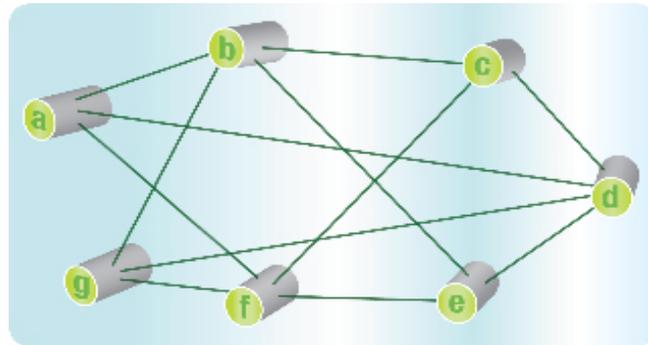


Figure 4-1 – This diagram represents one contention set, featuring both directly and indirectly contending strings.

While preliminary contention sets are determined during Initial Evaluation, the final configuration of the contention sets can only be established once the evaluation and dispute resolution process stages have concluded. This is because any application excluded through those processes might modify a contention set identified earlier.

A contention set may be augmented, split into two sets, or eliminated altogether as a result of an Extended Evaluation or dispute resolution proceeding. The composition of a contention set may also be modified as some applications may be voluntarily withdrawn throughout the process.

Refer to Figure 4-2: In contention set 1, applications D and G are eliminated. Application A is the only remaining application, so there is no contention left to resolve.

In contention set 2, all applications successfully complete Extended Evaluation and Dispute Resolution, so the original contention set remains to be resolved.

In contention set 3, application F is eliminated. Since application F was in direct contention with E and J, but E and J are not in contention with one other, the original contention set splits into two sets: one containing E and K in direct contention, and one containing I and J.

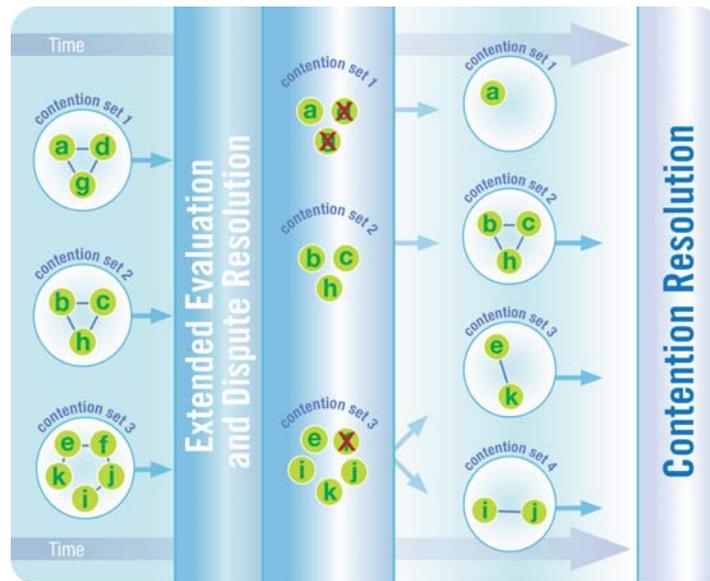


Figure 4-2 – Resolution of string contention cannot begin until all applicants within a contention set have completed all applicable previous stages.

The remaining contention cases must then be resolved through community priority evaluation or by other means, depending on the circumstances. In the string contention resolution stage, ICANN addresses each contention set to achieve an unambiguous resolution.

As described elsewhere in this guidebook, cases of contention might be resolved by community priority evaluation or an agreement among the parties. Absent that, the last-resort contention resolution mechanism will be an auction.

#### 4.1.2 *Impact of String Confusion Dispute Resolution Proceedings on Contention Sets*

If an applicant files a string confusion objection against another application (refer to Module 3), and the panel finds that user confusion is probable (that is, finds in favor of the objector), the two applications will be placed in direct contention with each other. Thus, the outcome of a dispute resolution proceeding based on a string confusion objection would be a new contention set structure for the relevant applications, augmenting the original contention set.

If an applicant files a string confusion objection against another application, and the panel finds that string confusion does not exist (that is, finds in favor of the responding applicant), the two applications will not be considered in direct contention with one another.

A dispute resolution outcome in the case of a string confusion objection filed by another applicant will not result in removal of an application from a previously established contention set.

#### *4.1.3 Self-Resolution of String Contention*

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Applicants that are identified as being in contention are encouraged to reach a settlement or agreement among themselves that resolves the contention. This may occur at any stage of the process, once ICANN publicly posts the applications received and the preliminary contention sets on its website.

Applicants may resolve string contention in a manner whereby one or more applicants withdraw their applications. An applicant may not resolve string contention by selecting a new string or by replacing itself with a joint venture. It is understood that applicants may seek to establish joint ventures in their efforts to resolve string contention. However, material changes in applications (for example, combinations of applicants to resolve contention) will require re-evaluation. This might require additional fees or evaluation in a subsequent application round. Applicants are encouraged to resolve contention by combining in a way that does not materially affect the remaining application. Accordingly, new joint ventures must take place in a manner that does not materially change the application, to avoid being subject to re-evaluation.

#### *4.1.4 Possible Contention Resolution Outcomes*

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An application that has successfully completed all previous stages and is no longer part of a contention set due to changes in the composition of the contention set (as described in subsection 4.1.1) or self-resolution by applicants in the contention set (as described in subsection 4.1.3) may proceed to the next stage.

An application that prevails in a contention resolution procedure, either community priority evaluation or auction, may proceed to the next stage.

In some cases, an applicant who is not the outright winner of a string contention resolution process can still proceed. This situation is explained in the following paragraphs.

If the strings within a given contention set are all identical, the applications are in direct contention with each other and there can only be one winner that proceeds to the next step.

However, where there are both direct and indirect contention situations within a set, more than one string may survive the resolution.

For example, consider a case where string A is in contention with B, and B is in contention with C, but C is not in contention with A. If A wins the contention resolution procedure, B is eliminated but C can proceed since C is not in direct contention with the winner and both strings can coexist in the DNS without risk for confusion.

## ***4.2 Community Priority Evaluation***

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Community priority evaluation will only occur if a community-based applicant selects this option. Community priority evaluation can begin once all applications in the contention set have completed all previous stages of the process.

The community priority evaluation is an independent analysis. Scores received in the applicant reviews are not carried forward to the community priority evaluation. Each application participating in the community priority evaluation begins with a score of zero.

### ***4.2.1 Eligibility for Community Priority Evaluation***

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As described in subsection 1.2.3 of Module 1, all applicants are required to identify whether their application type is:

- Community-based; or
- Standard.

Applicants designating their applications as community-based are also asked to respond to a set of questions in the application form to provide relevant information if a community priority evaluation occurs.

Only community-based applicants are eligible to participate in a community priority evaluation.

At the start of the contention resolution stage, all community-based applicants within remaining contention sets will be notified of the opportunity to opt for a community priority evaluation via submission of a deposit by a specified date. Only those applications for which a deposit has been received by the deadline will be scored in the community priority evaluation. Following the evaluation, the deposit will be refunded to applicants that score 14 or higher.

Before the community priority evaluation begins, the applicants who have elected to participate may be asked to provide additional information relevant to the community priority evaluation.

#### *4.2.2 Community Priority Evaluation Procedure*

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Community priority evaluations for each eligible contention set will be performed by a community priority panel appointed by ICANN to review these applications. The panel's role is to determine whether any of the community-based applications fulfills the community priority criteria. Standard applicants within the contention set, if any, will not participate in the community priority evaluation.

If a single community-based application is found to meet the community priority criteria (see subsection 4.2.3 below), that applicant will be declared to prevail in the community priority evaluation and may proceed. If more than one community-based application is found to meet the criteria, the remaining contention between them will be resolved as follows:

- In the case where the applications are in indirect contention with one another (see subsection 4.1.1), they will both be allowed to proceed to the next stage. In this case, applications that are in direct contention with any of these community-based applications will be eliminated.
- In the case where the applications are in direct contention with one another, these applicants will proceed to an auction. If all parties agree and present a joint request, ICANN may postpone the auction for a three-month period while the parties attempt to reach a settlement before proceeding

to auction. This is a one-time option; ICANN will grant no more than one such request for each set of contending applications.

If none of the community-based applications are found to meet the criteria, then all of the parties in the contention set (both standard and community-based applicants) will proceed to an auction.

Results of each community priority evaluation will be posted when completed.

Applicants who are eliminated as a result of a community priority evaluation are eligible for a partial refund of the gTLD evaluation fee (see Module 1).

#### ***4.2.3 Community Priority Evaluation Criteria***

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The Community Priority Panel will review and score the one or more community-based applications having elected the community priority evaluation against four criteria as listed below.

The scoring process is conceived to identify qualified community-based applications, while preventing both “false positives” (awarding undue priority to an application that refers to a “community” construed merely to get a sought-after generic word as a gTLD string) and “false negatives” (not awarding priority to a qualified community application). This calls for a holistic approach, taking multiple criteria into account, as reflected in the process. The scoring will be performed by a panel and be based on information provided in the application plus other relevant information available (such as public information regarding the community represented). The panel may also perform independent research, if deemed necessary to reach informed scoring decisions.

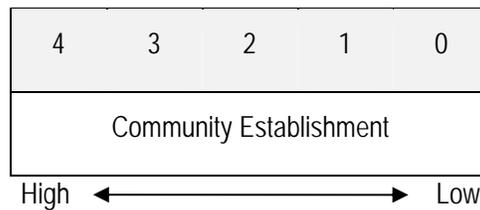
It should be noted that a qualified community application eliminates all directly contending standard applications, regardless of how well qualified the latter may be. This is a fundamental reason for very stringent requirements for qualification of a community-based application, as embodied in the criteria below. Accordingly, a finding by the panel that an application does not meet the scoring threshold to prevail in a community priority evaluation is not necessarily an indication the community itself is in some way inadequate or invalid.

The sequence of the criteria reflects the order in which they will be assessed by the panel. The utmost care has been taken to avoid any "double-counting" - any negative aspect found in assessing an application for one criterion should only be counted there and should not affect the assessment for other criteria.

An application must score at least 14 points to prevail in a community priority evaluation. The outcome will be determined according to the procedure described in subsection 4.2.2.

**Criterion #1: Community Establishment (0-4 points)**

A maximum of 4 points is possible on the Community Establishment criterion:



As measured by:

A. Delineation (2)

2	1	0
Clearly delineated, organized, and pre-existing community.	Clearly delineated and pre-existing community, but not fulfilling the requirements for a score of 2.	Insufficient delineation and pre-existence for a score of 1.

B. Extension (2)

2	1	0
Community of considerable size and longevity.	Community of either considerable size or longevity, but not fulfilling the requirements for a score of 2.	Community of neither considerable size nor longevity.

This section relates to the community as explicitly identified and defined according to statements in the application. (The implicit reach of the applied-for string is not considered here, but taken into account when scoring Criterion #2, "Nexus between Proposed String and Community.")

**Criterion 1 Definitions**

- "Community" - Usage of the expression "community" has evolved considerably from its Latin origin – "communitas" meaning "fellowship" – while still implying more of cohesion than a mere commonality of interest. Notably, as "community" is used throughout the application, there should be: (a) an awareness and recognition of a community among its members; (b) some understanding of the community's existence prior to September 2007 (when the new gTLD policy recommendations were completed); and (c) extended tenure or longevity—non-transience—into the future.
- "Delineation" relates to the membership of a community, where a clear and straight-forward membership definition scores high, while an unclear, dispersed or unbound definition scores low.
- "Pre-existing" means that a community has been active as such since before the new gTLD policy recommendations were completed in September 2007.
- "Organized" implies that there is at least one entity mainly dedicated to the community, with documented evidence of community activities.
- "Extension" relates to the dimensions of the community, regarding its number of members, geographical reach, and foreseeable activity lifetime, as further explained in the following.
- "Size" relates both to the number of members and the geographical reach of the community, and will be scored depending on the context rather than on absolute numbers - a geographic location community may count millions of members in a limited location, a language community may have

a million members with some spread over the globe, a community of service providers may have "only" some hundred members although well spread over the globe, just to mention some examples - all these can be regarded as of "considerable size."

- "Longevity" means that the pursuits of a community are of a lasting, non-transient nature.

**Criterion 1 Guidelines**

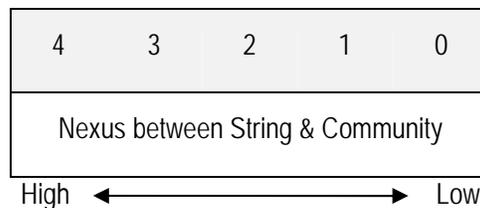
With respect to "Delineation" and "Extension," it should be noted that a community can consist of legal entities (for example, an association of suppliers of a particular service), of individuals (for example, a language community) or of a logical alliance of communities (for example, an international federation of national communities of a similar nature). All are viable as such, provided the requisite awareness and recognition of the community is at hand among the members. Otherwise the application would be seen as not relating to a real community and score 0 on both "Delineation" and "Extension."

With respect to "Delineation," if an application satisfactorily demonstrates all three relevant parameters (delineation, pre-existing and organized), then it scores a 2.

With respect to "Extension," if an application satisfactorily demonstrates both community size and longevity, it scores a 2.

**Criterion #2: Nexus between Proposed String and Community (0-4 points)**

A maximum of 4 points is possible on the Nexus criterion:



As measured by:

- A. Nexus (3)

3	2	0
The string matches the name of the community or is a well known short-form or abbreviation of the community name.	String identifies the community, but does not qualify for a score of 3.	String nexus does not fulfill the requirements for a score of 2.

B. Uniqueness (1)

1	0
String has no other significant meaning beyond identifying the community described in the application.	String does not fulfill the requirement for a score of 1.

This section evaluates the relevance of the string to the specific community that it claims to represent.

**Criterion 2 Definitions**

- "Name" of the community means the established name by which the community is commonly known by others. It may be, but does not need to be, the name of an organization dedicated to the community.
- "Identify" means that the applied for string closely describes the community or the community members, without over-reaching substantially beyond the community.

**Criterion 2 Guidelines**

With respect to "Nexus," for a score of 3, the essential aspect is that the applied-for string is commonly known by others as the identification / name of the community.

With respect to "Nexus," for a score of 2, the applied-for string should closely describe the community or the community members, without over-reaching substantially

beyond the community. As an example, a string could qualify for a score of 2 if it is a noun that the typical community member would naturally be called in the context. If the string appears excessively broad (such as, for example, a globally well-known but local tennis club applying for “.TENNIS”) then it would not qualify for a 2.

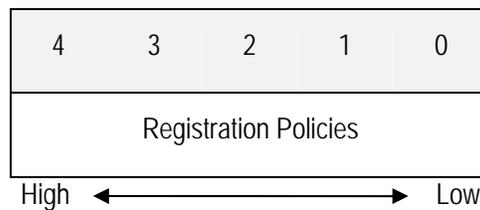
With respect to “Uniqueness,” “significant meaning” relates to the public in general, with consideration of the community language context added.

“Uniqueness” will be scored both with regard to the community context and from a general point of view. For example, a string for a particular geographic location community may seem unique from a general perspective, but would not score a 1 for uniqueness if it carries another significant meaning in the common language used in the relevant community location. The phrasing “...beyond identifying the community” in the score of 1 for “uniqueness” implies a requirement that the string does identify the community, i.e. scores 2 or 3 for “Nexus”, in order to be eligible for a score of 1 for “Uniqueness.”

It should be noted that “Uniqueness” is only about the *meaning* of the string - since the evaluation takes place to resolve contention there will obviously be other applications, community-based and/or standard, with identical or confusingly similar strings in the contention set to resolve, so the string will clearly not be “unique” in the sense of “alone.”

**Criterion #3: Registration Policies (0-4 points)**

A maximum of 4 points is possible on the Registration Policies criterion:



As measured by:

A. Eligibility (1)



1	0
restricted to community members.	unrestricted approach to eligibility.

B. Name selection (1)

1	0
Policies include name selection rules consistent with the articulated community-based purpose of the applied-for gTLD.	Policies do not fulfill the requirements for a score of 1.

C. Content and use (1)

1	0
Policies include rules for content and use consistent with the articulated community-based purpose of the applied-for gTLD.	Policies do not fulfill the requirements for a score of 1.

D. Enforcement (1)

1	0
Policies include specific enforcement measures (e.g. investigation practices, penalties, takedown procedures) constituting a coherent set with appropriate appeal mechanisms.	Policies do not fulfill the requirements for a score of 1.

This section evaluates the applicant's registration policies as indicated in the application. Registration policies are the conditions that the future registry will set for prospective registrants, i.e. those desiring to register second-level domain names under the registry.

**Criterion 3 Definitions**

- "Eligibility" means the qualifications that entities or individuals must have in order to be allowed as registrants by the registry.
- "Name selection" means the conditions that must be fulfilled for any second-level domain name to be deemed acceptable by the registry.
- "Content and use" means the restrictions stipulated by the registry as to the content provided in and the use of any second-level domain name in the registry.
- "Enforcement" means the tools and provisions set out by the registry to prevent and remedy any breaches of the conditions by registrants.

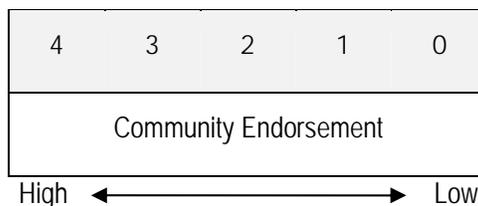
**Criterion 3 Guidelines**

With respect to "Eligibility," the limitation to community "members" can invoke a formal membership but can also be satisfied in other ways, depending on the structure and orientation of the community at hand. For example, for a geographic location community TLD, a limitation to members of the community can be achieved by requiring that the registrant's physical address is within the boundaries of the location.

With respect to "Name selection," "Content and use," and "Enforcement," scoring of applications against these sub-criteria will be done from a holistic perspective, with due regard for the particularities of the community explicitly addressed. For example, an application proposing a TLD for a language community may feature strict rules imposing this language for name selection as well as for content and use, scoring 1 on both B and C above. It could nevertheless include forbearance in the enforcement measures for tutorial sites assisting those wishing to learn the language and still score 1 on D. More restrictions do not automatically result in a higher score. The

restrictions and corresponding enforcement mechanisms proposed by the applicant should show an alignment with the community-based purpose of the TLD and demonstrate continuing accountability to the community named in the application.

**Criterion #4: Community Endorsement (0-4 points)**



As measured by:

A. Support (2)

2	1	0
Applicant is, or has documented support from, the recognized community institution(s)/ member organization(s) or has otherwise documented authority to represent the community.	Documented support from at least one group with relevance, but insufficient support for a score of 2.	Insufficient proof of support for a score of 1.

B. Opposition (2)

2	1	0
No opposition of relevance.	Relevant opposition from one group of non-negligible size.	Relevant opposition from two or more groups of non-negligible size.

This section evaluates community support and/or opposition to the application. Support and opposition will be scored in relation to the communities explicitly

addressed as stated in the application, with due regard for the communities implicitly addressed by the string.

**Criterion 4 Definitions**

- "Recognized" means the institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by the community members as representative of the community.
- "Relevance" and "relevant" refer to the communities explicitly and implicitly addressed. This means that opposition from communities not identified in the application but with an association to the applied-for string would be considered relevant.

**Criterion 4 Guidelines**

With respect to "Support," it follows that documented support from, for example, the only national association relevant to a particular community on a national level would score a 2 if the string is clearly oriented to that national level, but only a 1 if the string implicitly addresses similar communities in other nations.

Also with respect to "Support," the plurals in brackets for a score of 2, relate to cases of multiple institutions/organizations. In such cases there must be documented support from institutions/organizations representing a majority of the overall community addressed in order to score 2.

The applicant will score a 1 for "Support" if it does not have support from the majority of the recognized community institutions/member organizations, or does not provide full documentation that it has authority to represent the community with its application. A 0 will be scored on "Support" if the applicant fails to provide documentation showing support from recognized community institutions/community member organizations, or does not provide documentation showing that it has the authority to represent the community. It should be noted, however, that documented support from groups or communities that may be seen as implicitly addressed but have completely different orientations compared to the applicant community will not be required for a score of 2 regarding support.

To be taken into account as relevant support, such documentation must contain a description of the process and rationale used in arriving at the expression of support. Consideration of support is not based merely on the number of comments or expressions of support received.

When scoring “Opposition,” previous objections to the application as well as public comments during the same application round will be taken into account and assessed in this context. There will be no presumption that such objections or comments would prevent a score of 2 or lead to any particular score for “Opposition.” To be taken into account as relevant opposition, such objections or comments must be of a reasoned nature. Sources of opposition that are clearly spurious, unsubstantiated, made for a purpose incompatible with competition objectives, or filed for the purpose of obstruction will not be considered relevant.

### ***4.3 Auction: Mechanism of Last Resort***

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It is expected that most cases of contention will be resolved by the community priority evaluation, or through voluntary agreement among the involved applicants. Auction is a tie-breaker method for resolving string contention among the applications within a contention set, if the contention has not been resolved by other means.

An auction will not take place to resolve contention in the case where the contending applications are for geographic names (as defined in Module 2). In this case, the applications will be suspended pending resolution by the applicants.

An auction will take place, where contention has not already been resolved, in the case where an application for a geographic name is in a contention set with applications for similar strings that have not been identified as geographic names.

In practice, ICANN expects that most contention cases will be resolved through other means before reaching the

auction stage. There is a possibility that significant funding will accrue to ICANN as a result of one or more auctions.<sup>1</sup>

#### *4.3.1 Auction Procedures*

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An auction of two or more applications within a contention set is conducted as follows. The auctioneer successively increases the prices associated with applications within the contention set, and the respective applicants indicate their willingness to pay these prices. As the prices rise, applicants will successively choose to exit from the auction. When a sufficient number of applications have been eliminated so that no direct contentions remain (i.e., the remaining applications are no longer in contention with one another and all the relevant strings can be delegated as TLDs), the auction will be deemed to conclude. At the auction's conclusion, the applicants with remaining applications will pay the resulting prices and proceed toward delegation. This procedure is referred to as an "ascending-clock auction."

This section provides applicants an informal introduction to the practicalities of participation in an ascending-clock auction. It is intended only as a general introduction and is only preliminary. The detailed set of Auction Rules will be available prior to the commencement of any auction proceedings. If any conflict arises between this module and the auction rules, the auction rules will prevail.

For simplicity, this section will describe the situation where a contention set consists of two or more applications for identical strings.

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<sup>1</sup> The purpose of an auction is to resolve contention in a clear, objective manner. Proceeds from auctions will be reserved and earmarked until the uses of the proceeds are determined. It is planned that costs of the new gTLD program will offset by fees, so any funds coming from a last resort contention resolution mechanism such as auctions would result (after paying for the auction process) in additional funding. Therefore, consideration of a last resort contention mechanism should include the uses of funds. Funds must be earmarked separately and used in a manner that supports directly ICANN's Mission and Core Values and also maintains its not for profit status.

Possible uses include formation of a foundation with a clear mission and a transparent way to allocate funds to projects that are of interest to the greater Internet community, such as grants to support new gTLD applications or registry operators from communities in subsequent gTLD rounds, the creation of an ICANN-administered/community-based fund for specific projects for the benefit of the Internet community, the creation of a registry continuity fund for the protection of registrants (ensuring that funds would be in place to support the operation of a gTLD registry until a successor could be found), or establishment of a security fund to expand use of secure protocols, conduct research, and support standards development organizations in accordance with ICANN's security and stability mission.

Further detail on the potential uses of funds will be provided with updated Applicant Guidebook materials.

All auctions will be conducted over the Internet, with participants placing their bids remotely using a web-based software system designed especially for auction. The auction software system will be compatible with current versions of most prevalent browsers, and will not require the local installation of any additional software.

Auction participants (“bidders”) will receive instructions for access to the online auction site. Access to the site will be password-protected and bids will be encrypted through SSL. If a bidder temporarily loses connection to the Internet, that bidder may be permitted to submit its bids in a given auction round by fax, according to procedures described in the auction rules. The auctions will generally be conducted to conclude quickly, ideally in a single day.

The auction will be carried out in a series of auction rounds, as illustrated in Figure 4-3. The sequence of events is as follows:

1. For each auction round, the auctioneer will announce in advance: (1) the start-of-round price, (2) the end-of-round price, and (3) the starting and ending times of the auction round. In the first auction round, the start-of-round price for all bidders in the auction will be USD 0. In later auction rounds, the start-of-round price will be its end-of-round price from the previous auction round.

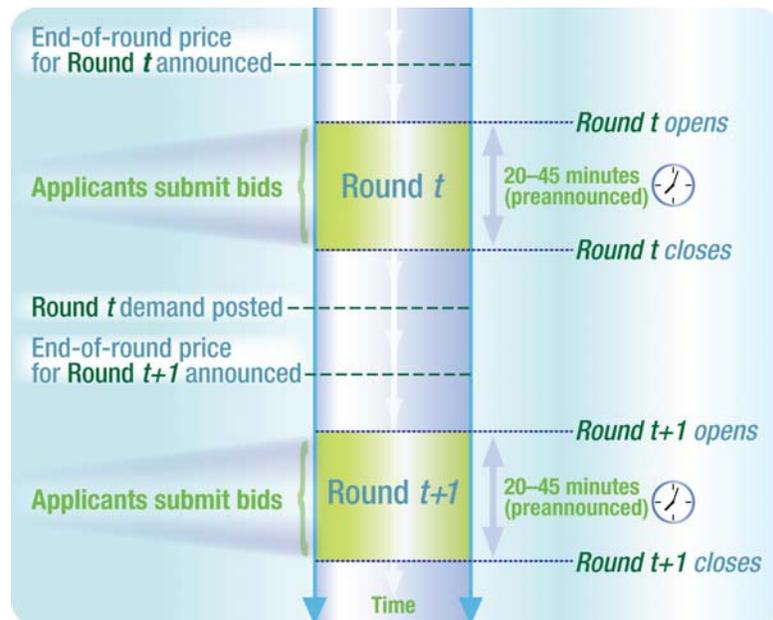


Figure 4-3 – Sequence of events during an ascending-clock auction.

2. During each auction round, bidders will be required to submit a bid or bids representing their willingness to pay within the range of intermediate prices between the start-of-round and end-of-round prices. In this way a bidder indicates its willingness to stay in the auction at all prices through and including the end-of-auction round price, or its wish to exit the auction at a price less than the end-of-auction round price, called the exit bid.
3. Exit is irrevocable. If a bidder exited the auction in a previous auction round, the bidder is not permitted to re-enter in the current auction round.
4. Bidders may submit their bid or bids at any time during the auction round.
5. Only bids that comply with all aspects of the auction rules will be considered valid. If more than one valid bid is submitted by a given bidder within the time limit of the auction round, the auctioneer will treat the last valid submitted bid as the actual bid.
6. At the end of each auction round, bids become the bidders' legally-binding offers to secure the relevant gTLD strings at prices up to the respective bid amounts, subject to closure of the auction in accordance with the auction rules. In later auction rounds, bids may be used to exit from the auction at subsequent higher prices.
7. After each auction round, the auctioneer will disclose the aggregate number of bidders remaining in the auction at the end-of-round prices for the auction round, and will announce the prices and times for the next auction round.
  - Each bid should consist of a single price associated with the application, and such price must be greater than or equal to the start-of-round price.
  - If the bid amount is strictly less than the end-of-round price, then the bid is treated as an exit bid at the specified amount, and it signifies the bidder's binding commitment to pay up to the bid amount if its application is approved.
  - If the bid amount is greater than or equal to the end-of-round price, then the bid signifies that the

bidder wishes to remain in the auction at all prices in the current auction round, and it signifies the bidder's binding commitment to pay up to the end-of-round price if its application is approved. Following such bid, the application cannot be eliminated within the current auction round.

- To the extent that the bid amount exceeds the end-of-round price, then the bid is also treated as a proxy bid to be carried forward to the next auction round. The bidder will be permitted to change the proxy bid amount in the next auction round, and the amount of the proxy bid will not constrain the bidder's ability to submit any valid bid amount in the next auction round.
  - No bidder is permitted to submit a bid for any application for which an exit bid was received in a prior auction round. That is, once an application has exited the auction, it may not return.
  - If no valid bid is submitted within a given auction round for an application that remains in the auction, then the bid amount is taken to be the amount of the proxy bid, if any, carried forward from the previous auction round or, if none, the bid is taken to be an exit bid at the start-of-round price for the current auction round.
8. This process continues, with the auctioneer increasing the price range for each given TLD string in each auction round, until there is one remaining bidder at the end-of-round price. After an auction round in which this condition is satisfied, the auction concludes and the auctioneer determines the clearing price. The last remaining application is deemed the successful application, and the associated bidder is obligated to pay the clearing price.

Figure 4-4 illustrates how an auction for five contending applications might progress.

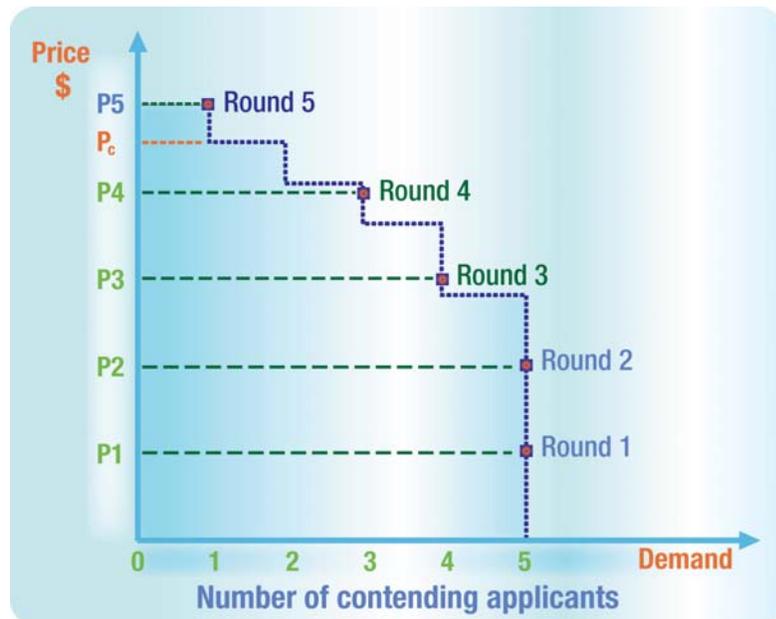


Figure 4-4 – Example of an auction for five mutually-contending applications.

- Before the first auction round, the auctioneer announces the end-of-round price  $P_1$ .
- During Auction round 1, a bid is submitted for each application. In Figure 4-4, all five bidders submit bids of at least  $P_1$ . Since the aggregate demand exceeds one, the auction proceeds to Auction round 2. The auctioneer discloses that five contending applications remained at  $P_1$  and announces the end-of-round price  $P_2$ .
- During Auction round 2, a bid is submitted for each application. In Figure 4-4, all five bidders submit bids of at least  $P_2$ . The auctioneer discloses that five contending applications remained at  $P_2$  and announces the end-of-round price  $P_3$ .
- During Auction round 3, one of the bidders submits an exit bid at slightly below  $P_3$ , while the other four bidders submit bids of at least  $P_3$ . The auctioneer discloses that four contending applications remained at  $P_3$  and announces the end-of-round price  $P_4$ .

- During Auction round 4, one of the bidders submits an exit bid midway between  $P_3$  and  $P_4$ , while the other three remaining bidders submit bids of at least  $P_4$ . The auctioneer discloses that three contending applications remained at  $P_4$  and announces the end-of-auction round price  $P_5$ .
- During Auction round 5, one of the bidders submits an exit bid at slightly above  $P_4$ , and one of the bidders submits an exit bid at  $P_c$  midway between  $P_4$  and  $P_5$ . The final bidder submits a bid greater than  $P_c$ . Since the aggregate demand at  $P_5$  does not exceed one, the auction concludes in Auction round 5. The application associated with the highest bid in Auction round 5 is deemed the successful application. The clearing price is  $P_c$ , as this is the lowest price at which aggregate demand can be met.

To the extent possible, auctions to resolve multiple string contention situations will be conducted simultaneously.

#### 4.3.1.1 Currency

For bids to be comparable, all bids in the auction will be submitted in any integer (whole) number of US dollars.

#### 4.3.1.2 Fees

A bidding deposit will be required of applicants participating in the auction, in an amount to be determined. The bidding deposit must be transmitted by wire transfer to a specified bank account specified by ICANN or its auction provider at a major international bank, to be received in advance of the auction date. The amount of the deposit will determine a bidding limit for each bidder: the bidding deposit will equal 10% of the bidding limit; and the bidder will not be permitted to submit any bid in excess of its bidding limit.

In order to avoid the need for bidders to pre-commit to a particular bidding limit, bidders may be given the option of making a specified deposit that will provide them with unlimited bidding authority for a given application. The amount of the deposit required for unlimited bidding authority will depend on the particular contention set and will be based on an assessment of the possible final prices within the auction.

All deposits from nondefaulting losing bidders will be returned following the close of the auction.

#### *4.3.2 Winning Bid Payments*

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Any applicant that participates in an auction will be required to sign a bidder agreement that acknowledges its rights and responsibilities in the auction, including that its bids are legally binding commitments to pay the amount bid if it wins (i.e., if its application is approved), and to enter into the prescribed registry agreement with ICANN— together with a specified penalty for defaulting on payment of its winning bid or failing to enter into the required registry agreement.

The winning bidder in any auction will be required to pay the full amount of the final price within 20 business days of the end of the auction. Payment is to be made by wire transfer to the same international bank account as the bidding deposit, and the applicant's bidding deposit will be credited toward the final price.

In the event that a bidder anticipates that it would require a longer payment period than 20 business days due to verifiable government-imposed currency restrictions, the bidder may advise ICANN well in advance of the auction and ICANN will consider applying a longer payment period to all bidders within the same contention set.

Any winning bidder for whom the full amount of the final price is not received within 20 business days of the end of an auction is subject to being declared in default. At their sole discretion, ICANN and its auction provider may delay the declaration of default for a brief period, but only if they are convinced that receipt of full payment is imminent.

Any winning bidder for whom the full amount of the final price is received within 20 business days of the end of an auction retains the obligation to execute the required registry agreement within 90 days of the end of auction. Such winning bidder who does not execute the agreement within 90 days of the end of the auction is subject to being declared in default. At their sole discretion, ICANN and its auction provider may delay the declaration of default for a brief period, but only if they are convinced that execution of the registry agreement is imminent.

#### *4.3.3 Post-Default Procedures*

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Once declared in default, any winning bidder is subject to immediate forfeiture of its position in the auction and assessment of default penalties. After a winning bidder is declared in default, the remaining bidders will receive an offer to have their applications accepted, one at a time, in descending order of their exit bids. In this way, the next bidder would be declared the winner subject to payment of its last bid price. The same default procedures and penalties are in place for any runner-up bidder receiving such an offer.

Each bidder that is offered the relevant gTLD will be given a specified period—typically, four business days—to respond as to whether it wants the gTLD. A bidder who responds in the affirmative will have 20 business days to submit its full payment. A bidder who declines such an offer cannot revert on that statement, has no further obligations in this context and will not be considered in default.

The penalty for defaulting on a winning bid will equal 10% of the defaulting bid.<sup>2</sup> Default penalties will be charged against any defaulting applicant's bidding deposit before the associated bidding deposit is returned.

#### *4.4 Contention Resolution and Contract Execution*

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An applicant that has been declared the winner of a contention resolution process will proceed by entering into the contract execution step. (Refer to section 5.1 of Module 5.)

If a winner of the contention resolution procedure has not executed a contract within 90 days of the decision, ICANN has the right to deny that application and extend an offer to the runner-up applicant, if any, to proceed with its application. For example, in an auction, another applicant who would be considered the runner-up applicant might proceed toward delegation. This offer is at ICANN's option only. The runner-up applicant in a contention resolution process has no automatic right to an applied-for gTLD string if the first place winner does not execute a contract within a specified time.

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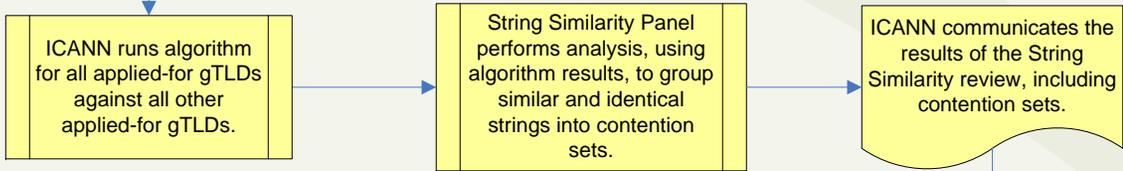
<sup>2</sup> If bidders were given the option of making a specified deposit that provided them with unlimited bidding authority for a given application and if the winning bidder utilized this option, then the penalty for defaulting on a winning bid will be the lesser of the following: (1) 10% of the defaulting bid, or (2) the specified deposit amount that provided the bidder with unlimited bidding authority.



Application/  
Admin Check



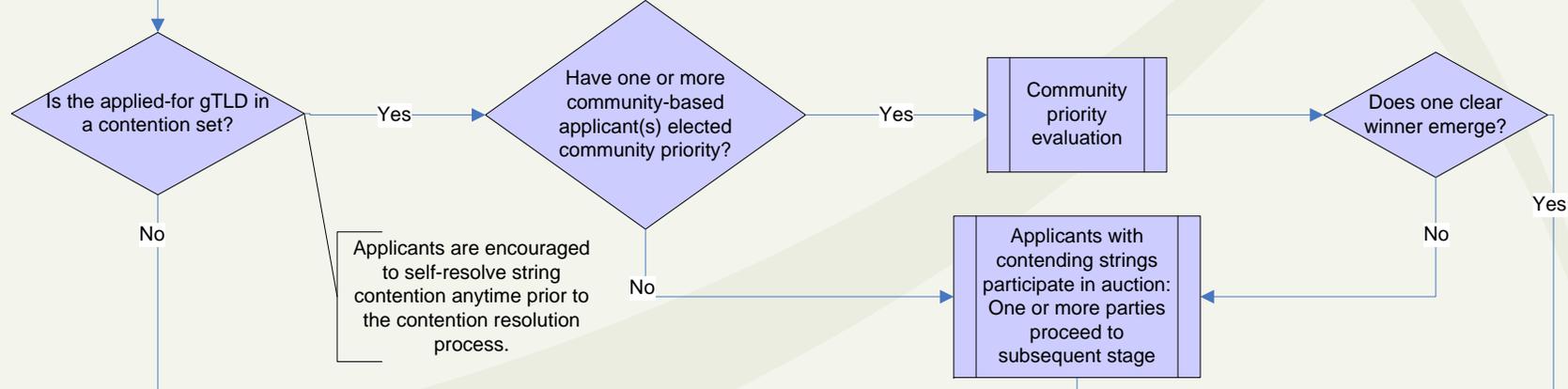
Initial Evaluation (IE)  
String Review



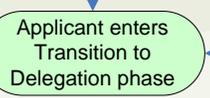
IE + EE  
+ Dispute Res

IE, Extended Evaluation (EE), and Dispute Resolution continue. Some applications may not pass certain elements of the review process, **which may alter the contention sets.**

String Contention



Transition to  
Delegation





# Applicant Guidebook

## April 2011 Discussion Draft Module 5

Please note that this is a discussion draft only. Potential applicants should not rely on any of the proposed details of the new gTLD program as the program remains subject to further consultation and revision.

15 April 2011

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# Module 5

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## *Transition to Delegation*

This module describes the final steps required of an applicant for completion of the process, including execution of a registry agreement with ICANN and preparing for delegation of the new gTLD into the root zone.

### *5.1 Registry Agreement*

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All applicants that have successfully completed the evaluation process—including, if necessary, the dispute resolution and string contention processes—are required to enter into a registry agreement with ICANN before proceeding to delegation.

After the close of each stage in the process, ICANN will send a notification to those successful applicants that are eligible for execution of a registry agreement at that time.

To proceed, applicants will be asked to provide specified information for purposes of executing the registry agreement:

1. Documentation of the applicant's ~~continued operations~~~~financial~~ instrument (see Specification 8 to the agreement).
2. Confirmation of contact information and signatory to the agreement.
3. Notice of any material changes requested to the terms of the agreement.
4. The applicant must report: (i) any ownership interest it holds in any registrar or reseller of registered names, (ii) if known, any ownership interest that a registrar or reseller of registered names holds in the applicant, and (iii) if the applicant controls, is controlled by, or is under common control with any registrar or reseller of registered names. ICANN retains the right to refer an application to a competition authority prior to entry into the registry agreement if it is determined that the registry-registrar cross-ownership

arrangements might raise competition issues. For this purpose "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of securities, as trustee or executor, by serving as a member of a board of directors or equivalent governing body, by contract, by credit arrangement or otherwise.

To ensure that an applicant continues to be a going concern in good legal standing, ICANN reserves the right to ask the applicant to submit additional updated documentation and information before entering into the registry agreement.

ICANN will begin processing registry agreements one month after the date of the notification to successful applicants. Requests will be handled in the order the complete information is received.

Generally, the process will include formal approval of the agreement without requiring additional Board review, so long as: the application passed all evaluation criteria; there are no material changes in circumstances; and there are no material changes to the base agreement. There may be other cases where the Board requests review of an application.

Eligible applicants are expected to have executed the registry agreement within nine (9) months of the notification date. Failure to do so may result in loss of eligibility, at ICANN's discretion. An applicant may request an extension of this time period for up to an additional nine (9) months if it can demonstrate, to ICANN's reasonable satisfaction, that it is working diligently and in good faith toward successfully completing the steps necessary for entry into the registry agreement.

The registry agreement can be reviewed in the attachment to this module. Certain provisions in the agreement are labeled as applicable to governmental and intergovernmental entities only. Private entities, even if supported by a government or IGO, would not ordinarily be eligible for these special provisions.

All successful applicants are expected to enter into the agreement substantially as written. Applicants may request

and negotiate terms by exception; however, this extends the time involved in executing the agreement. In the event that material changes to the agreement are requested, these must first be approved by the ICANN Board of Directors before execution of the agreement.

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

## 5.2 Pre-Delegation Testing

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Each applicant will be required to complete pre-delegation technical testing as a prerequisite to delegation into the root zone. This pre-delegation test must be completed within the time period specified in the registry agreement.

The purpose of the pre-delegation technical test is to verify that the applicant has met its commitment to establish registry operations in accordance with the technical and operational criteria described in Module 2.

The test is also intended to indicate that the applicant can operate the gTLD in a stable and secure manner. All applicants will be tested on a pass/fail basis according to the requirements that follow.

The test elements cover both the DNS server operational infrastructure and registry system operations. In many cases the applicant will perform the test elements as instructed and provide documentation of the results to ICANN to demonstrate satisfactory performance. At ICANN's discretion, aspects of the applicant's self-certification documentation can be audited either on-site at the services delivery point of the registry or elsewhere as determined by ICANN.

### 5.2.1 Testing Procedures

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The applicant may initiate the pre-delegation test by submitting to ICANN the Pre-Delegation form and

accompanying documents containing all of the following information:

- All name server names and IPv4/IPv6 addresses to be used in serving the new TLD data;
- If using anycast, the list of names and IPv4/IPv6 unicast addresses allowing the identification of each individual server in the anycast sets;
- If IDN is supported, the complete IDN tables used in the registry system;
- A test zone for the new TLD must be signed at test time and the valid key-set to be used at the time of testing must be provided to ICANN in the documentation, as well as the TLD DNSSEC Policy Statement (DPS);
- The executed agreement between the selected escrow agent and the applicant; and
- Self-certification documentation as described below for each test item.

ICANN will review the material submitted and in some cases perform tests in addition to those conducted by the applicant. After testing, ICANN will assemble a report with the outcome of the tests and provide that report to the applicant.

Any clarification request, additional information request, or other request generated in the process will be highlighted and listed in the report sent to the applicant.

ICANN may request the applicant to complete load tests considering an aggregated load where a single entity is performing registry services for multiple TLDs.

Once an applicant has met all of the pre-delegation testing requirements, it is eligible to request delegation of its applied-for gTLD.

If an applicant does not complete the pre-delegation steps within the time period specified in the registry agreement, ICANN reserves the right to terminate the registry agreement.

### 5.2.2 Test Elements: DNS Infrastructure

The first set of test elements concerns the DNS infrastructure of the new gTLD. In all tests of the DNS infrastructure, all requirements are independent of whether IPv4 or IPv6 is used. All tests shall be done both over IPv4 and IPv6, with reports providing results according to both protocols.

**UDP Support** -- The DNS infrastructure to which these tests apply comprises the complete set of servers and network infrastructure to be used by the chosen providers to deliver DNS service for the new gTLD to the Internet. The documentation provided by the applicant must include the results from a system performance test indicating available network and server capacity and an estimate of expected capacity during normal operation to ensure stable service as well as to adequately address Distributed Denial of Service (DDoS) attacks.

Self-certification documentation shall include data on load capacity, latency and network reachability.

Load capacity shall be reported using a table, and a corresponding graph, showing percentage of queries responded against an increasing number of queries per second generated from local (to the servers) traffic generators. The table shall include at least 20 data points and loads of UDP-based queries that will cause up to 10% query loss against a randomly selected subset of servers within the applicant's DNS infrastructure. Responses must either contain zone data or be NXDOMAIN or NODATA responses to be considered valid.

Query latency shall be reported in milliseconds as measured by DNS probes located just outside the border routers of the physical network hosting the name servers, from a network topology point of view.

Reachability will be documented by providing information on the transit and peering arrangements for the DNS server locations, listing the AS numbers of the transit providers or peers at each point of presence and available bandwidth at those points of presence.

**TCP support** -- TCP transport service for DNS queries and responses must be enabled and provisioned for expected load. ICANN will review the capacity self-certification documentation provided by the applicant and will perform

TCP reachability and transaction capability tests across a randomly selected subset of the name servers within the applicant's DNS infrastructure. In case of use of anycast, each individual server in each anycast set will be tested.

Self-certification documentation shall include data on load capacity, latency and external network reachability.

Load capacity shall be reported using a table, and a corresponding graph, showing percentage of queries that generated a valid (zone data, NODATA, or NXDOMAIN) response against an increasing number of queries per second generated from local (to the name servers) traffic generators. The table shall include at least 20 data points and loads that will cause up to 10% query loss (either due to connection timeout or connection reset) against a randomly selected subset of servers within the applicant's DNS infrastructure.

Query latency will be reported in milliseconds as measured by DNS probes located just outside the border routers of the physical network hosting the name servers, from a network topology point of view.

Reachability will be documented by providing records of TCP-based DNS queries from nodes external to the network hosting the servers. These locations may be the same as those used for measuring latency above.

***DNSSEC support*** -- Applicant must demonstrate support for EDNS(0) in its server infrastructure, the ability to return correct DNSSEC-related resource records such as DNSKEY, RRSIG, and NSEC/NSEC3 for the signed zone, and the ability to accept and publish DS resource records from second-level domain administrators. In particular, the applicant must demonstrate its ability to support the full life cycle of KSK and ZSK keys. ICANN will review the self-certification materials as well as test the reachability, response sizes, and DNS transaction capacity for DNS queries using the EDNS(0) protocol extension with the "DNSSEC OK" bit set for a randomly selected subset of all name servers within the applicant's DNS infrastructure. In case of use of anycast, each individual server in each anycast set will be tested.

Load capacity, query latency, and reachability shall be documented as for UDP and TCP above.

### 5.2.3 Test Elements: Registry Systems

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As documented in the registry agreement, registries must provide support for EPP within their Shared Registration System, and provide Whois service both via port 43 and a web interface, in addition to support for the DNS. This section details the requirements for testing these registry systems.

**System performance** -- The registry system must scale to meet the performance requirements described in Specification [106](#) of the registry agreement and ICANN will require self-certification of compliance. ICANN will review the self-certification documentation provided by the applicant to verify adherence to these minimum requirements.

**Whois support** -- Applicant must provision Whois services for the anticipated load. ICANN will verify that Whois data is accessible over IPv4 and IPv6 via both TCP port 43 and via a web interface and review self-certification documentation regarding Whois transaction capacity. Response format according to Specification 4 of the registry agreement and access to Whois (both port 43 and via web) will be tested by ICANN remotely from various points on the Internet over both IPv4 and IPv6.

Self-certification documents shall describe the maximum number of queries per second successfully handled by both the port 43 servers as well as the web interface, together with an applicant-provided load expectation.

Additionally, a description of deployed control functions to detect and mitigate data mining of the Whois database shall be documented.

**EPP Support** -- As part of a shared registration service, applicant must provision EPP services for the anticipated load. ICANN will verify conformance to appropriate RFCs (including EPP extensions for DNSSEC). ICANN will also review self-certification documentation regarding EPP transaction capacity.

Documentation shall provide a maximum Transaction per Second rate for the EPP interface with 10 data points corresponding to registry database sizes from 0 (empty) to

the expected size after one year of operation, as determined by applicant.

Documentation shall also describe measures taken to handle load during initial registry operations, such as a land-rush period.

**IPv6 support** -- The ability of the registry to support registrars adding, changing, and removing IPv6 DNS records supplied by registrants will be tested by ICANN. If the registry supports EPP access via IPv6, this will be tested by ICANN remotely from various points on the Internet.

**DNSSEC support** -- ICANN will review the ability of the registry to support registrars adding, changing, and removing DNSSEC-related resource records as well as the registry's overall key management procedures. In particular, the applicant must demonstrate its ability to support the full life cycle of key changes for child domains. Inter-operation of the applicant's secure communication channels with the IANA for trust anchor material exchange will be verified.

The practice and policy document (also known as the DNSSEC Policy Statement or DPS), describing key material storage, access and usage for its own keys and the registrants' trust anchor material, is also reviewed as part of this step.

**IDN support** -- ICANN will verify the complete IDN table(s) used in the registry system. The table(s) must comply with the guidelines in <http://iana.org/procedures/idn-repository.html>.

Requirements related to IDN for Whois are being developed. After these requirements are developed, prospective registries will be expected to comply with published IDN-related Whois requirements as part of pre-delegation testing.

**Escrow deposit** -- The applicant-provided samples of data deposit that include both a full and an incremental deposit showing correct type and formatting of content will be reviewed. Special attention will be given to the agreement with the escrow provider to ensure that escrowed data can be released within 24 hours should it be necessary. ICANN may, at its option, ask an independent third party to

demonstrate the reconstitutability of the registry from escrowed data. ICANN may elect to test the data release process with the escrow agent.

### 5.3 Delegation Process

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Upon notice of successful completion of the ICANN pre-delegation testing, applicants may initiate the process for delegation of the new gTLD into the root zone database.

This will include provision of additional information and completion of additional technical steps required for delegation. Information about the delegation process is available at <http://iana.org/domains/root/>.

### 5.4 Ongoing Operations

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An applicant that is successfully delegated a gTLD will become a "Registry Operator." In being delegated the role of operating part of the Internet's domain name system, the applicant will be assuming a number of significant responsibilities. ICANN will hold all new gTLD operators accountable for the performance of their obligations under the registry agreement, and it is important that all applicants understand these responsibilities.

#### 5.4.1 What is Expected of a Registry Operator

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The registry agreement defines the obligations of gTLD registry operators. A breach of the registry operator's obligations may result in ICANN compliance actions up to and including termination of the registry agreement. Prospective applicants are encouraged to review the following brief description of some of these responsibilities.

Note that this is a non-exhaustive list provided to potential applicants as an introduction to the responsibilities of a registry operator. For the complete and authoritative text, please refer to the registry agreement.

A registry operator is obligated to:

***Operate the TLD in a stable and secure manner.*** The registry operator is responsible for the entire technical operation of the TLD. As noted in RFC 1591<sup>1</sup>:

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<sup>1</sup> See <http://www.rfc-editor.org/rfc/rfc1591.txt>

"The designated manager must do a satisfactory job of operating the DNS service for the domain. That is, the actual management of the assigning of domain names, delegating subdomains and operating nameservers must be done with technical competence. This includes keeping the central IR<sup>2</sup> (in the case of top-level domains) or other higher-level domain manager advised of the status of the domain, responding to requests in a timely manner, and operating the database with accuracy, robustness, and resilience."

The registry operator is required to comply with relevant technical standards in the form of RFCs and other guidelines. Additionally, the registry operator must meet performance specifications in areas such as system downtime and system response times (see Specifications [6](#) and [10](#) of the registry agreement).

***Comply with consensus policies and temporary policies.***

gTLD registry operators are required to comply with consensus policies. Consensus policies may relate to a range of topics such as issues affecting interoperability of the DNS, registry functional and performance specifications, database security and stability, or resolution of disputes over registration of domain names.

To be adopted as a consensus policy, a policy must be developed by the Generic Names Supporting Organization (GNSO)<sup>3</sup> following the process in Annex A of the ICANN Bylaws.<sup>4</sup> The policy development process involves deliberation and collaboration by the various stakeholder groups participating in the process, with multiple opportunities for input and comment by the public, and can take significant time.

Examples of existing consensus policies are the Inter-Registrar Transfer Policy (governing transfers of domain names between registrars), and the Registry Services Evaluation Policy (establishing a review of proposed new registry services for security and stability or competition concerns), although there are several more, as found at <http://www.icann.org/en/general/consensus-policies.htm>.

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<sup>2</sup> IR is a historical reference to "Internet Registry," a function now performed by ICANN.

<sup>3</sup> <http://gns0.icann.org>

<sup>4</sup> <http://www.icann.org/en/general/bylaws.htm#AnnexA>

gTLD registry operators are obligated to comply with both existing consensus policies and those that are developed in the future. Once a consensus policy has been formally adopted, ICANN will provide gTLD registry operators with notice of the requirement to implement the new policy and the effective date.

In addition, the ICANN Board may, when required by circumstances, establish a temporary policy necessary to maintain the stability or security of registry services or the DNS. In such a case, all gTLD registry operators will be required to comply with the temporary policy for the designated period of time.

For more information, see Specification 1 of the registry agreement.

***Implement start-up rights protection measures.*** The registry operator must implement, at a minimum, ~~either~~ a Sunrise period ~~or~~ and a Trademark Claims service during the start-up phases for registration in the TLD, as provided in the registry agreement. These mechanisms will be supported by the established Trademark Clearinghouse as indicated by ICANN.

The Sunrise period allows eligible rightsholders an early opportunity to register names in the TLD.

The Trademark Claims service provides notice to potential registrants of existing trademark rights, as well as notice to rightsholders of relevant names registered. Registry operators may continue offering the Trademark Claims service after the relevant start-up phases have concluded.

For more information, see Specification 7 of the registry agreement and the Trademark Clearinghouse model accompanying this module.

***Implement post-launch rights protection measures.*** The registry operator is required to implement decisions made under the Uniform Rapid Suspension (URS) procedure, including suspension of specific domain names within the registry. The registry operator is also required to comply with and implement decisions made according to the Trademark Post-Delegation Dispute Resolution Policy (PDDRP).

The required measures are described fully in the URS and PDDRP procedures accompanying this module. Registry

operators may introduce additional rights protection measures relevant to the particular gTLD.

***Implement measures for protection of country and territory names in the new gTLD.*** All new gTLD registry operators are required to provide certain minimum protections for country and territory names, including an initial reservation requirement and establishment of applicable rules and procedures for release of these names. Registry operators are encouraged to implement measures for protection of geographical names in addition to those required by the agreement, according to the needs and interests of each gTLD's particular circumstances. (See Specification 5 of the registry agreement).

***Pay recurring fees to ICANN.*** In addition to supporting expenditures made to accomplish the objectives set out in ICANN's mission statement, these funds enable the support required for new gTLDs, including: contractual compliance, registry liaison, increased registrar accreditations, and other registry support activities. The fees include both a fixed component (USD 25,000 annually) and, once the TLD has passed a threshold size, a variable fee based on transaction volume. See Article 6 of the registry agreement.

***Regularly deposit data into escrow.*** This serves an important role in registrant protection and continuity for certain instances where the registry or one aspect of the registry operations experiences a system failure or loss of data. (See Specification 2 of the registry agreement.)

***Deliver monthly reports in a timely manner.*** A registry operator must submit a report to ICANN on a monthly basis. The report includes registrar transactions for the month and is used by ICANN for calculation of registrar fees. (See Specification 3 of the registry agreement.)

***Provide Whois service.*** A registry operator must provide a publicly available Whois service for registered domain names in the TLD. (See Specification 4 of the registry agreement.)

***Maintain partnerships with ICANN-accredited registrars.*** A registry operator creates a Registry-Registrar Agreement (RRA) to define requirements for its registrars. This must include certain terms that are specified in the Registry Agreement, and may include additional terms specific to

the TLD. A registry operator must provide non-discriminatory access to its registry services to all ICANN-accredited registrars with whom it has entered into an RRA, and who are in compliance with the requirements. This includes providing advance notice of pricing changes to all registrars, in compliance with the time frames specified in the agreement. (See Article 2 of the registry agreement.)

***Maintain an abuse point of contact.*** A registry operator must maintain and publish on its website a single point of contact responsible for addressing matters requiring expedited attention and providing a timely response to abuse complaints concerning all names registered in the TLD through all registrars of record, including those involving a reseller. (See Specification 6 of the registry agreement.)

***Cooperate with contractual compliance audits.*** To maintain a level playing field and a consistent operating environment, ICANN staff performs periodic audits to assess contractual compliance and address any resulting problems. A registry operator must provide documents and information requested by ICANN that are necessary to perform such audits. (See Article 2 of the registry agreement.)

***Maintain a Continued Operations Instrument.*** A registry operator must, at the time of the agreement, have in place a continued operations instrument sufficient to fund basic registry operations for a period of three (3) years. This requirement remains in place for five (5) years after delegation of the TLD, after which time the registry operator is no longer required to maintain the continued operations instrument. (See Specification 8 to the registry agreement.)

***Maintain community-based policies and procedures.*** If the registry operator designated its application as community-based at the time of the application, the registry operator has requirements in its registry agreement to maintain the community-based policies and procedures it specified in its application. The registry operator is bound by the Registry Restrictions Dispute Resolution Procedure with respect to disputes regarding execution of its community-based policies and procedures. (See Article 2 to the registry agreement.)

***Have continuity and transition plans in place.*** This includes performing failover testing on a regular basis. In the event that a transition to a new registry operator becomes

necessary, the registry operator is expected to cooperate by consulting with ICANN on the appropriate successor, providing the data required to enable a smooth transition, and complying with the applicable registry transition procedures. (See Articles 2 and 4 of the registry agreement.)

***Make TLD zone files available via a standardized process.***

This includes provision of access to the registry's zone file to credentialed users, according to established access, file, and format standards. The registry operator will enter into a standardized form of agreement with zone file users and will accept credential information for users via a clearinghouse. (See Specification 4 of the registry agreement.)

***Implement DNSSEC.*** The registry operator is required to sign the TLD zone files implementing Domain Name System Security Extensions (DNSSEC) in accordance with the relevant technical standards. The registry must accept public key material from registrars for domain names registered in the TLD, and publish a DNSSEC Policy Statement describing key material storage, access, and usage for the registry's keys and the registrants' trust anchor material. (See Specification 6 of the registry agreement.)

#### ***5.4.2 What is Expected of ICANN***

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ICANN will continue to provide support for gTLD registry operators as they launch and maintain registry operations. ICANN's gTLD registry liaison function provides a point of contact for gTLD registry operators for assistance on a continuing basis.

ICANN's contractual compliance function will perform audits on a regular basis to ensure that gTLD registry operators remain in compliance with agreement obligations, as well as investigate any complaints from the community regarding the registry operator's adherence to its contractual obligations. See <http://www.icann.org/en/compliance/> for more information on current contractual compliance activities.

ICANN's Bylaws require ICANN to act in an open and transparent manner, and to provide equitable treatment among registry operators. ICANN is responsible for maintaining the security and stability of the global Internet, and looks forward to a constructive and cooperative

relationship with future gTLD registry operators in furtherance of this goal.

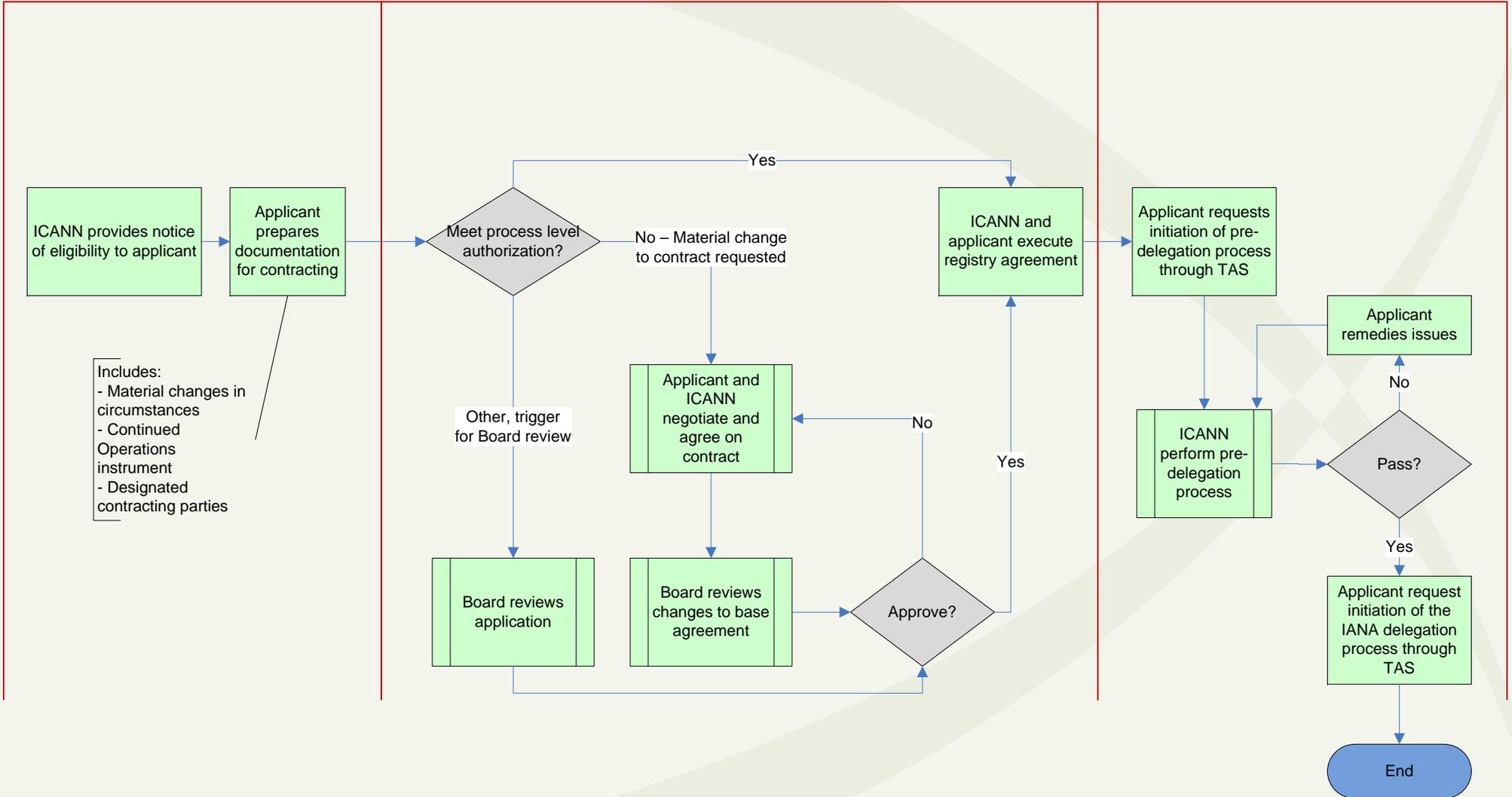
# Draft – New gTLD Program - Transition to Delegation

(Timeframes are estimates only)

## Applicant Doc Prep 1 Month

## Contracting – 1 day to 9 months

## Pre-Delegation Testing – 1 to 12 months



- Includes:
- Material changes in circumstances
  - Continued Operations instrument
  - Designated contracting parties

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# *New gTLD Agreement*

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~~*Proposed Final Version*~~  
*April 2011 Discussion Draft*

This document contains the registry agreement associated with the Applicant Guidebook for New gTLDs.

Successful gTLD applicants would enter into this form of registry agreement with ICANN prior to delegation of the new gTLD. (Note: ICANN reserves the right to make reasonable updates and changes to this proposed agreement during the course of the application process, including as the possible result of new policies that might be adopted during the course of the application process). Background information on how this version of the draft agreement differs from the previous draft is available in the explanatory memorandum *Summary of Changes to Base Agreement*.

It is important to note that this agreement does not constitute a formal position by ICANN, and has not been approved by ICANN's Board of Directors. The agreement is being set out for review and community discussion purposes, and ICANN encourages comments and suggestions for improvement. Potential applicants should not rely on any of the proposed details of the new gTLD program as the program remains subject to further consultation and revision.

## REGISTRY AGREEMENT

This REGISTRY AGREEMENT (this “Agreement”) is entered into as of \_\_\_\_\_ (the “Effective Date”) between Internet Corporation for Assigned Names and Numbers, a California nonprofit public benefit corporation (“ICANN”), and \_\_\_\_\_, a \_\_\_\_\_ (“Registry Operator”).

### ARTICLE 1.

#### DELEGATION AND OPERATION OF TOP-LEVEL DOMAIN; REPRESENTATIONS AND WARRANTIES

**1.1 Domain and Designation.** The Top-Level Domain to which this Agreement applies is \_\_\_\_\_ (the “TLD”). Upon the Effective Date and until the end of the Term (as defined in Section 4.1), ICANN designates Registry Operator as the registry operator for the TLD, subject to the requirements and necessary approvals for delegation of the TLD and entry into the root-zone.

**1.2 Technical Feasibility of String.** While ICANN has encouraged and will continue to encourage universal acceptance of all top-level domain strings across the Internet, certain top-level domain strings may encounter difficulty in acceptance by ISPs and webhosters and/or validation by web applications. Registry Operator shall be responsible for ensuring to its satisfaction the technical feasibility of the TLD string prior to entering into this Agreement.

#### **1.3 Representations and Warranties.**

(a) Registry Operator represents and warrants to ICANN as follows:

(i) all material information provided and statements made in the registry TLD application, and statements made in writing during the negotiation of this Agreement, were true and correct in all material respects at the time made, and such information or statements continue to be true and correct in all material respects as of the Effective Date except as otherwise previously disclosed in writing by Registry Operator to ICANN;

(ii) Registry Operator is duly organized, validly existing and in good standing under the laws of the jurisdiction set forth in the preamble hereto, and Registry Operator has all requisite power and authority and obtained all necessary approvals to enter into and duly execute and deliver this Agreement; and

(iii) Registry Operator has delivered to ICANN a duly executed instrument that secures the funds required to perform registry functions for the TLD in the event of the termination or expiration of this Agreement (the “Continued Operations Instrument”), and such instrument is a binding obligation of the parties thereto, enforceable against the parties thereto in accordance with its terms.

(b) ICANN represents and warrants to Registry Operator that ICANN is a nonprofit public benefit corporation duly organized, validly existing and in good standing under the laws of the State of California, United States of America. ICANN has all requisite power and authority and obtained all necessary corporate approvals to enter into and duly execute and deliver this Agreement.

## ARTICLE 2.

### COVENANTS OF REGISTRY OPERATOR

Registry Operator covenants and agrees with ICANN as follows:

**2.1 Approved Services; Additional Services.** Registry Operator shall be entitled to provide the Registry Services described in clauses (a) and (b) of the first paragraph of Section 2.1 in the specification at [*see specification 6*] (“Specification 6”) and such other Registry Services set forth on Exhibit A (collectively, the “Approved Services”). If Registry Operator desires to provide any Registry Service that is not an Approved Service or is a modification to an Approved Service (each, an “Additional Service”), Registry Operator shall submit a request for approval of such Additional Service pursuant to the Registry Services Evaluation Policy at <http://www.icann.org/en/registries/rsep/rsep.html>, as such policy may be amended from time to time in accordance with the bylaws of ICANN (as amended from time to time, the “ICANN Bylaws”) applicable to Consensus Policies (the “RSEP”). Registry Operator may offer Additional Services only with the written approval of ICANN. In its reasonable discretion, ICANN may require an amendment to this Agreement reflecting the provision of any Additional Service which is approved pursuant to the RSEP, which amendment shall be in a form reasonably acceptable to the parties.

**2.2 Compliance with Consensus Policies and Temporary Policies.** Registry Operator shall comply with and implement all Consensus Policies and Temporary Policies found at <http://www.icann.org/general/consensus-policies.htm>, as of the Effective Date and as may in the future be developed and adopted in accordance with the ICANN Bylaws, provided such future Consensus Policies and Temporary Policies are adopted in accordance with the procedure and relate to those topics and subject to those limitations set forth at [*see specification 1*]\* (“Specification 1”).

**2.3 Data Escrow.** Registry Operator shall comply with the registry data escrow procedures posted at [*see specification 2*]\*.

**2.4 Monthly Reporting.** Within twenty (20) calendar days following the end of each calendar month, Registry Operator shall deliver to ICANN reports in the format posted in the specification at [*see specification 3*]\*.

**2.5 Publication of Registration Data.** Registry Operator shall provide public access to registration data in accordance with the specification posted at [*see specification 4*]\* (“Specification 4”).

**2.6 Reserved Names.** Except to the extent that ICANN otherwise expressly authorizes in writing, Registry Operator shall comply with the restrictions on registration of character strings set forth at [*see specification 5*]\* (“Specification 5”). Registry Operator may establish policies concerning the reservation or blocking of additional character strings within the TLD at its discretion. If Registry Operator is the registrant for any domain names in the Registry TLD (other than the Second-Level Reservations for Registry Operations from Specification 5), such registrations must be through an ICANN accredited registrar. Any such registrations will be considered Transactions (as defined in Section 6.1) for purposes of calculating the Registry-Level Transaction Fee to be paid to ICANN by Registry Operator pursuant to Section 6.1.

~~**2.7 Functional and Performance Specifications.** Functional and Performance Specifications for operation of the TLD will be as set forth in the specification at [*see specification 6*]\*. Registry Operator shall comply with such Functional and Performance Specifications and, for a period of at least~~

\* Final text will be posted on ICANN website; agreement reference to be replaced by hyperlink.

~~one year, shall keep technical and operational records sufficient to evidence compliance with such specifications for each calendar year during the Term.~~

**2.7 Registry Interoperability and Continuity.** Registry Operator shall comply with the Registry Interoperability and Continuity Specifications as set forth in Specification 6.

**2.8 Protection of Legal Rights of Third Parties.** Registry Operator must specify, and comply with, a process and procedures for launch of the TLD and initial registration-related and ongoing protection of the legal rights of third parties as set forth in the specification at [*see specification 7*]\* (“Specification 7”). Registry Operator may, at its election, implement additional protections of the legal rights of third parties. Any changes or modifications to the process and procedures required by Specification 7 following the Effective Date must be approved in advance by ICANN in writing. Registry Operator must comply with all ~~determinations and decisions made~~ remedies imposed by ICANN pursuant to Section 2 of Specification 7, subject to Registry Operator’s right to challenge such ~~determinations~~ remedies as set forth in the applicable procedure- described therein. Registry Operator shall take reasonable steps to investigate and respond to any reports (including reports from law enforcement and governmental and quasi-governmental agencies) of illegal conduct in connection with the use of the TLD.

## **2.9 Registrars.**

(a) Registry Operator must use only ICANN accredited registrars in registering domain names. Registry Operator must provide non-discriminatory access to Registry Services to all ICANN accredited registrars that enter into and are in compliance with Registry Operator’s registry-registrar agreement for the TLD- provided, that Registry Operator ~~must use a uniform non-discriminatory agreement with all registrars authorized to register names in the TLD, provided that such agreement may set forth non-~~ may establish non-discriminatory criteria for qualification to register names in the TLD that are reasonably related to the proper functioning of the TLD. Registry Operator must use a uniform non-discriminatory agreement with all registrars authorized to register names in the TLD. Such agreement may be revised by Registry Operator from time to time; provided, however, that any such revisions must be approved in advance by ICANN.

(b) If Registry Operator (i) becomes an Affiliate or reseller of an ICANN accredited registrar, or (ii) subcontracts the provision of any Registry Services to an ICANN accredited registrar, registrar reseller or any of their respective Affiliates, then, in either such case of (i) or (ii) above, Registry Operator will give ICANN prompt notice of the contract, transaction or other arrangement that resulted in such ~~Affiliation~~ affiliation, reseller relationship or subcontract, as applicable. ICANN reserves the right, but not the obligation, to refer any such contract, transaction or other arrangement to relevant competition authorities in the event that ICANN determines that such contract, transaction or other arrangement might raise competition issues.

(c) For the purposes of this Agreement: (i) “Affiliate” means a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the person or entity specified, and (ii) “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of securities, as trustee or executor, by serving as an employee or a member of a board of directors or equivalent governing body, by contract, by credit arrangement or otherwise.

## **2.10 Pricing for Registry Services.**

\* Final text will be posted on ICANN website; agreement reference to be replaced by hyperlink.

(a) With respect to initial domain name registrations, Registry Operator shall provide each ICANN accredited registrar that has executed Registry Operator’s registry-registrar agreement advance written notice of any price increase (including as a result of the elimination of any refunds, rebates, discounts, product tying or other programs which had the effect of reducing the price charged to registrars, unless such refunds, rebates, discounts, product tying or other programs are of a limited duration that is clearly and conspicuously disclosed to the registrar when offered) of no less than thirty (30) calendar days. Registry Operator shall offer registrars the option to obtain initial domain name registrations for periods of one to ten years at the discretion of the registrar, but no greater than ten years.

(b) With respect to renewal of domain name registrations, Registry Operator shall provide each ICANN accredited registrar that has executed Registry Operator’s registry-registrar agreement advance written notice of any price increase (including as a result of the elimination of any refunds, rebates, discounts, product tying or other programs which had the effect of reducing the price charged to registrars) of no less than one hundred eighty (180) calendar days. Notwithstanding the foregoing, with respect to renewal of domain name registrations: (i) Registry Operator need only provide thirty (30) calendar days notice of any price increase if the resulting price is less than or equal to (A) for the period beginning on the Effective Date and ending twelve (12) months following the Effective Date, the initial price charged for registrations in the TLD, or (B) for subsequent periods, a price for which Registry Operator provided a notice required by this Section 2.10(b) within that past twelve (12) months; and (ii) Registry Operator need not provide notice of any price increase for the imposition of the Variable Registry-Level Fee set forth in Section 6.3.

(c) ~~(b)~~ Registry Operator shall offer registrars the option to obtain domain name registration renewals at the current price (i.e. the price in place prior to any noticed increase) for periods of one to ten years at the discretion of the registrar, but no greater than ten years. Registry Operator must have uniform pricing for registration renewals (~~i.e. “Renewal Pricing”~~). For the purposes of determining Renewal Pricing, the price for each domain registration renewal must be identical to the price of all other domain name registration renewals, and such price must take into account universal application of any refunds, rebates, discounts, product tying or other programs); ~~unless, provided, that Registry Operator may offer discounted Renewal Pricing pursuant to a Qualified Marketing Program (as defined below).~~ The foregoing sentence shall not apply for purposes of determining Renewal Pricing if the registrar has provided Registry Operator with documentation that demonstrates that the applicable registrant expressly agreed in its registration agreement with registrar to a higher renewal price at the time of the initial registration of the domain name following clear and conspicuous disclosure of such renewal price to such registrant. The parties acknowledge that the purpose of this Section 2.10(c) is to prohibit abusive and/or discriminatory Renewal Pricing practices and this Section 2.10(c) will be interpreted broadly to prohibit such practices. For purposes of this Section 2.10(c), a “Qualified Marketing Program” is a marketing program pursuant to which Registry Operator offers discounted Renewal Pricing, provided that each of the following criteria is satisfied: (i) the program and related discounts are offered for a period of time not to exceed 90 calendar days, (ii) the programs are made available to all registrars and registrations; and (iii) the intent or effect of the program is not to exclude any particular class(es) of registrations (e.g., registrations held by large corporations) or increase the renewal price of any particular class(es) of registrations.

(d) Registry Operator shall provide public query-based DNS lookup service for the TLD (that is, operate the Registry TLD zone servers) at its sole expense.

## **2.11 Contractual and Operational Compliance Audits.**

\* Final text will be posted on ICANN website; agreement reference to be replaced by hyperlink.

(a) ICANN may from time to time (not to exceed twice per calendar year) conduct, or engage a third party to conduct, contractual compliance audits to assess compliance by Registry Operator with its representations and warranties contained in Article 1 of this Agreement and its covenants contained in Article 2 of this Agreement. Such audits shall be tailored to achieve the purpose of assessing compliance, and ICANN will (a) give reasonable advance notice of any such audit, which notice shall specify in reasonable detail the categories of documents, data and other information requested by ICANN, and (b) use commercially reasonable efforts to conduct such audit in such a manner as to not unreasonably disrupt the operations of Registry Operator. As part of such audit and upon request by ICANN, Registry Operator shall timely provide all responsive documents, data and any other information necessary to demonstrate Registry Operator's compliance with this Agreement. Upon no less than five (5) business days notice (unless otherwise agreed to by Registry Operator), ICANN may, as part of any contractual compliance audit, conduct site visits during regular business hours to assess compliance by Registry Operator with its representations and warranties contained in Article 1 of this Agreement and its covenants contained in Article 2 of this Agreement.

(b) Any ~~such~~ audit conducted pursuant to Section 2.11(a) will be at ICANN's expense, unless (i) Registry Operator (A) controls, is controlled by, is under common control or is otherwise Affiliated with, any ICANN accredited registrar or registrar reseller or any of their respective Affiliates, or (B) has subcontracted the provision of Registry Services to an ICANN accredited registrar or registrar reseller or any of their respective Affiliates, and, in either case of (A) or (B) above, the audit relates to Registry Operator's compliance with Section 2.14, in which case Registry Operator shall reimburse ICANN for all reasonable costs and expenses associated with the portion of the audit related to Registry Operator's compliance with Section 2.14, or (ii) the audit is related to a discrepancy in the fees paid by Registry Operator hereunder in excess of 5% to ICANN's detriment, in which case Registry Operator shall reimburse ICANN for all reasonable costs and expenses associated with the entirety of such audit. In either such case of (i) or (ii) above, ~~Registry Operator shall reimburse ICANN for all reasonable costs and expenses associated with such audit, which~~ such reimbursement will be paid together with the next Registry-Level Fee payment due following the date of transmittal of the cost statement for such audit.

(c) Notwithstanding ~~the foregoing~~ Section 2.11(a), if Registry Operator is found not to be in compliance with its representations and warranties contained in Article 1 of this Agreement or its covenants contained in Article 2 of this Agreement in two consecutive audits conducted pursuant to this Section 2.11, ICANN may increase the number of such audits to one per calendar quarter.

(d) Registry Operator will give ICANN immediate notice of the commencement of any of the proceedings referenced in Section 4.3(d) or the occurrence of any of the matters specified in Section 4.3(f).

**2.12 Continued Operations Instrument.** Registry Operator shall comply with the terms and conditions relating to the Continued Operations Instrument set forth in the specification at [*see specification 8*].

**2.13 Emergency Transition.** Registry Operator agrees that in the event that any of the registry functions set forth in Section ~~56~~ of Specification ~~610~~ fails for a period longer than the emergency threshold for such function set forth in Section ~~56~~ of Specification ~~610~~, ICANN may designate an emergency interim registry operator of the registry for the TLD (an "Emergency Operator") in accordance with ICANN's registry transition process (available at \_\_\_\_\_) (as the same may be amended from time to time, the "Registry Transition Process") until such time as Registry Operator has demonstrated to ICANN's reasonable satisfaction that it can resume operation of the registry for the TLD without the

\* Final text will be posted on ICANN website; agreement reference to be replaced by hyperlink.

reoccurrence of such failure. Following such demonstration, Registry Operator may transition back into operation of the registry for the TLD pursuant to the procedures set out in the Registry Transition Process, provided that Registry Operator pays all reasonable costs incurred (i) by ICANN as a result of the designation of the Emergency Operator and (ii) by the Emergency Operator in connection with the operation of the registry for the TLD, which costs shall be documented in reasonable detail in records that shall be made available to Registry Operator. In the event ICANN designates an Emergency Operator pursuant to this Section 2.13 and the Registry Transition Process, Registry Operator shall provide ICANN or any such Emergency Operator with all data (including the data escrowed in accordance with Section 2.3) regarding operations of the registry for the TLD necessary to maintain operations and registry functions that may be reasonably requested by ICANN or such Emergency Operator. Registry Operator agrees that ICANN may make any changes it deems necessary to the IANA database for DNS and WHOIS records with respect to the TLD in the event that an Emergency Operator is designated pursuant to this Section 2.13. In addition, in the event of such failure, ICANN shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable.

**2.14 Registry Code of Conduct.** In connection with the operation of the registry for the TLD, Registry Operator shall comply with the Registry Code of Conduct as set forth in the specification at [*see specification 9*].

**2.15 Cooperation with Economic Studies.** If ICANN initiates or commissions an economic study on the impact or functioning of new generic top-level domains on the Internet, the DNS or related matters, Registry Operator shall cooperate with such study, including by delivering to ICANN or its designee conducting such study all Registry data (including confidential data of Registry Operator) requested by ICANN or its designee, provided that ICANN or its designee shall aggregate and anonymize such data prior to any public disclosure of such data.

**2.16 Registry Performance Specifications.** Registry Performance Specifications for operation of the TLD will be as set forth in the specification at [*see specification 10*]\*. Registry Operator shall comply with such Performance Specifications and, for a period of at least one year, shall keep technical and operational records sufficient to evidence compliance with such specifications for each calendar year during the Term.

**2.17** ~~2.15~~ *[Note: For Community-Based TLDs Only]* **Obligations of Registry Operator to TLD Community.** Registry Operator shall establish registration policies in conformity with the application submitted with respect to the TLD for: (i) naming conventions within the TLD, (ii) requirements for registration by members of the TLD community, and (iii) use of registered domain names in conformity with the stated purpose of the community-based TLD. Registry Operator shall operate the TLD in a manner that allows the TLD community to discuss and participate in the development and modification of policies and practices for the TLD. Registry Operator shall establish procedures for the enforcement of registration policies for the TLD, and resolution of disputes concerning compliance with TLD registration policies, and shall enforce such registration policies. Registry Operator agrees to implement and be bound by the Registry Restrictions Dispute Resolution Procedure as set forth at [*insert applicable URL*] with respect to disputes arising pursuant to this Section ~~2.15~~2.17.]

### ARTICLE 3.

#### COVENANTS OF ICANN

ICANN covenants and agrees with Registry Operator as follows:

\* Final text will be posted on ICANN website; agreement reference to be replaced by hyperlink.

**3.1 Open and Transparent.** Consistent with ICANN’s expressed mission and core values, ICANN shall operate in an open and transparent manner.

**3.2 Equitable Treatment.** ICANN shall not apply standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably and shall not single out Registry Operator for disparate treatment unless justified by substantial and reasonable cause.

**3.3 TLD Nameservers.** ICANN will use commercially reasonable efforts to ensure that any changes to the TLD nameserver designations submitted to ICANN by Registry Operator (in a format and with required technical elements specified by ICANN at <http://www.iana.org/domains/root/> will be implemented by ICANN within seven (7) calendar days or as promptly as feasible following technical verifications.

**3.4 Root-zone Information Publication.** ICANN’s publication of root-zone contact information for the TLD will include Registry Operator and its administrative and technical contacts. Any request to modify the contact information for the Registry Operator must be made in the format specified from time to time by ICANN at <http://www.iana.org/domains/root/>.

**3.5 Authoritative Root Database.** To the extent that ICANN is authorized to set policy with regard to an authoritative root server system, ICANN shall use commercially reasonable efforts to (a) ensure that the authoritative root will point to the top-level domain nameservers designated by Registry Operator for the TLD, (b) maintain a stable, secure, and authoritative publicly available database of relevant information about the TLD, in accordance with ICANN publicly available policies and procedures, and (c) coordinate the Authoritative Root Server System so that it is operated and maintained in a stable and secure manner; [provided, that ICANN shall not be in breach of this Agreement and ICANN shall have no liability in the event that any third party \(including any governmental entity or internet service provider\) blocks or restricts access to the TLD in any jurisdiction.](#)

## ARTICLE 4.

### TERM AND TERMINATION

**4.1 Term.** The term of this Agreement will be ten years from the Effective Date (as such term may be extended pursuant to Section 4.2, the “Term”).

**4.2 Renewal.**

(a) This Agreement will be renewed for successive periods of ten years upon the expiration of the initial Term set forth in Section 4.1 and each successive Term, unless:

(i) Following notice by ICANN to Registry Operator of a fundamental and material breach of Registry Operator’s covenants set forth in Article 2 or breach of its payment obligations under Article 6 of this Agreement, which notice shall include with specificity the details of the alleged breach, and such breach has not been cured within thirty (30) calendar days of such notice, (A) an arbitrator or court has finally determined that Registry Operator has been in fundamental and material breach of such covenant(s) or in breach of its payment obligations, and (B) Registry Operator has failed to comply with such determination and cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court; or

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(ii) During the then current Term, Registry Operator shall have been found by an arbitrator (pursuant to Section 5.2 of this Agreement) on at least three (3) separate occasions to have been in fundamental and material breach (whether or not cured) of Registry Operator's covenants set forth in Article 2 or breach of its payment obligations under Article 6 of this Agreement.

(b) Upon the occurrence of the events set forth in Section 4.2(a) (i) or (ii), the Agreement shall terminate at the expiration of the then current Term.

#### **4.3 Termination by ICANN.**

(a) ICANN may, upon notice to Registry Operator, terminate this Agreement if: (i) Registry Operator fails to cure (A) any fundamental and material breach of Registry Operator's representations and warranties set forth in Article 1 or covenants set forth in Article 2, or (B) any breach of Registry Operator's payment obligations set forth in Article 6 of this Agreement, each within thirty (30) calendar days after ICANN gives Registry Operator notice of such breach, which notice will include with specificity the details of the alleged breach, (ii) an arbitrator or court has finally determined that Registry Operator is in fundamental and material breach of such covenant(s) or in breach of its payment obligations, and (iii) Registry Operator fails to comply with such determination and cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court.

(b) ICANN may, upon notice to Registry Operator, terminate this Agreement if Registry Operator fails to complete all testing and procedures (identified by ICANN in writing to Registry Operator prior to the date hereof) for delegation of the TLD into the root zone within ~~twelve (12)~~ months of the Effective Date. Registry Operator may request an extension for up to additional ~~twelve (12)~~ months for delegation if it can demonstrate, to ICANN's reasonable satisfaction, that Registry Operator is working diligently and in good faith toward successfully completing the steps necessary for delegation of the TLD. Any fees paid by Registry Operator to ICANN prior to such termination date shall be retained by ICANN in full.

(c) ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator fails to cure a material breach of Registry Operator's obligations set forth in Section 2.12 of this Agreement within thirty (30) calendar days of delivery of notice of such breach by ICANN, or if the Continued Operations Instrument is not in effect for greater than sixty (60) consecutive calendar days at any time following the Effective Date, (ii) an arbitrator or court has finally determined that Registry Operator is in material breach of such covenant, and (iii) Registry Operator fails to cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court.

(d) ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator makes an assignment for the benefit of creditors or similar act, (ii) attachment, garnishment or similar proceedings are commenced against Registry Operator, which proceedings are a material threat to Registry Operator's ability to operate the registry for the TLD, and are not dismissed within ~~thirty~~sixty (30/60) days of their commencement, (iii) a trustee, receiver, liquidator or equivalent is appointed in place of Registry Operator or maintains control over any of Registry Operator's property, (iv) execution is levied upon any property of Registry Operator, (v) proceedings are instituted by or against Registry Operator under any bankruptcy, insolvency, reorganization or other laws relating to the relief of debtors and such proceedings are not dismissed within thirty (30) days of their commencement, or (vi) Registry Operator files for protection under the United States Bankruptcy Code, 11 U.S.C. Section

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101 et seq., or a foreign equivalent or liquidates, dissolves or otherwise discontinues its operations or the operation of the TLD.

(e) ICANN may, upon thirty (30) calendar days' notice to Registry Operator, terminate this Agreement pursuant to Section 2 of Specification 7, subject to Registry Operator's right to challenge such termination as set forth in the applicable procedure described therein.

(f) ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator knowingly employs any officer that is convicted of a ~~felony or of a~~ misdemeanor related to financial activities or of any felony, or is judged by a court of competent jurisdiction to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN reasonably deems as the substantive equivalent of any of the foregoing and such officer is not terminated within thirty (30) calendar days of Registry Operator's knowledge of the foregoing, or (ii) any member of Registry Operator's board of directors or similar governing body is convicted of a ~~felony or of a~~ misdemeanor related to financial activities or of any felony, or is judged by a court of competent jurisdiction to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN reasonably deems as the substantive equivalent of any of the foregoing and such member is not removed from Registry Operator's board of directors or similar governing body within thirty (30) calendar days of Registry Operator's knowledge of the foregoing.

(g) [*Applicable to intergovernmental organizations or governmental entities only.*] ICANN may terminate this Agreement pursuant to Section 7.14.

#### 4.4 Termination by Registry Operator.

(a) Registry Operator may terminate this Agreement upon notice to ICANN if, (i) ICANN fails to cure any fundamental and material breach of ICANN's covenants set forth in Article 3, within thirty (30) calendar days after Registry Operator gives ICANN notice of such breach, which notice will include with specificity the details of the alleged breach, (ii) an arbitrator or court has finally determined that ICANN is in fundamental and material breach of such covenants, and (iii) ICANN fails to comply with such determination and cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court.

(b) Registry Operator may terminate this Agreement for any reason upon one hundred eighty (180) calendar day advance notice to ICANN.

**4.5 Transition of Registry upon Termination of Agreement.** Upon expiration of the Term pursuant to Section 4.1 or Section 4.2 or any termination of this Agreement pursuant to Section 4.3 or Section 4.4, Registry Operator shall provide ICANN or any successor registry operator that may be designated by ICANN for the TLD in accordance with this Section 4.5 with all data (including the data escrowed in accordance with Section 2.3) regarding operations of the registry for the TLD necessary to maintain operations and registry functions that may be reasonably requested by ICANN or such successor registry operator. After consultation with Registry Operator, ICANN shall determine whether or not to transition operation of the TLD to a successor registry operator in its sole discretion and in conformance with the Registry Transition Process; provided, however, that if all sub-domains in the registry for the TLD are registered or licensed to and used exclusively by Registry Operator or individuals or entities that are Affiliates of Registry Operator, then ICANN may not transition operation of the TLD to a successor registry operator without the consent of Registry Operator (which shall not be unreasonably withheld, conditioned or delayed). Registry Operator agrees that ICANN may make any changes ~~in~~ it deems necessary to the IANA database for DNS and WHOIS records with respect to the TLD in the event of a

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transition of the TLD pursuant to this Section 4.5. In addition, ICANN or its designee shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable, regardless of the reason for termination or expiration of this Agreement.

*[Alternative Section 4.5 Transition of Registry upon Termination of Agreement text for intergovernmental organizations or governmental entities or other special circumstances:*

**“Transition of Registry upon Termination of Agreement.** Upon expiration of the Term pursuant to Section 4.1 or Section 4.2 or any termination of this Agreement pursuant to Section 4.3 or Section 4.4, in connection with ICANN’s designation of a successor registry operator for the TLD, Registry Operator and ICANN agree to consult each other and work cooperatively to facilitate and implement the transition of the TLD in accordance with this Section 4.5. After consultation with Registry Operator, ICANN shall determine whether or not to transition operation of the TLD to a successor registry operator in its sole discretion and in conformance with the Registry Transition Process. In the event ICANN determines to transition operation of the TLD to a successor registry operator, upon Registry Operator’s consent (which shall not be unreasonably withheld, conditioned or delayed), Registry Operator shall provide ICANN or such successor registry operator for the TLD with any data regarding operations of the TLD necessary to maintain operations and registry functions that may be reasonably requested by ICANN or such successor registry operator in addition to data escrowed in accordance with Section 2.3 hereof. In the event that Registry Operator does not consent to provide such data, any registry data related to the TLD shall be returned to Registry Operator, unless otherwise agreed upon by the parties. Registry Operator agrees that ICANN may make any changes it deems necessary to the IANA database for DNS and WHOIS records with respect to the TLD in the event of a transition of the TLD pursuant to this Section 4.5.”]

**4.6 Effect of Termination.** Upon any expiration of the Term or termination of this Agreement, the obligations and rights of the parties hereto shall cease, provided that such expiration or termination of this Agreement shall not relieve the parties of any obligation or breach of this Agreement accruing prior to such expiration or termination, including, without limitation, all accrued payment obligations arising under Article 6. In addition Article 5 and Article 7, Section 2.12, Section 4.5, and this Section 4.6 shall survive the expiration or termination of this Agreement. For the avoidance of doubt, the rights of Registry Operator to operate the registry for the TLD shall immediately cease upon any expiration of the Term or termination of this Agreement.

## ARTICLE 5.

### DISPUTE RESOLUTION

**5.1 Cooperative Engagement.** Before either party may initiate arbitration pursuant to Section 5.2 below, ICANN and Registry Operator, following initiation of communications by either party, must attempt to resolve the dispute by engaging in good faith discussion over a period of at least fifteen (15) calendar days.

**5.2 Arbitration.** Disputes arising under or in connection with this Agreement, including requests for specific performance, will be resolved through binding arbitration conducted pursuant to the rules of the International Court of Arbitration of the International Chamber of Commerce. The arbitration will be conducted in the English language and will occur in Los Angeles County, California. Any arbitration will be in front of a single arbitrator, unless (i) ICANN is seeking punitive or exemplary damages, or operational sanctions, or (ii) the parties agree in writing to a greater number of arbitrators. In either case of clauses (i) or (ii) in the preceding sentence, the arbitration will be in front of three

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arbitrators with each party selecting one arbitrator and the two selected arbitrators selecting the third arbitrator. In order to expedite the arbitration and limit its cost, the arbitrator(s) shall establish page limits for the parties' filings in conjunction with the arbitration, and should the arbitrator(s) determine that a hearing is necessary, the hearing shall be limited to one (1) calendar day, provided that in any arbitration in which ICANN is seeking punitive or exemplary damages, or operational sanctions, the hearing may be extended for ~~an~~one (1) additional number of days~~calendar day~~ if agreed upon by the parties or ordered by the arbitrator(s) based on the arbitrator(s) independent determination or the reasonable request of one of the parties thereto. The prevailing party in the arbitration will have the right to recover its costs and reasonable attorneys' fees, which the arbitrator(s) shall include in the awards. In ~~any proceeding, ICANN may request the appointed arbitrators award punitive or exemplary damages, or operational sanctions (including without limitation an order temporarily restricting Registry Operator's right to sell new registrations)~~ in the event the arbitrators determine that Registry Operator has been repeatedly and willfully in fundamental and material breach of its obligations set forth in Article 2, Article 6 or Section 5.4 of this Agreement, ICANN may request the arbitrators award punitive or exemplary damages, or operational sanctions (including without limitation an order temporarily restricting Registry Operator's right to sell new registrations). In any litigation involving ICANN concerning this Agreement, jurisdiction and exclusive venue for such litigation will be in a court located in Los Angeles County, California; however, the parties will also have the right to enforce a judgment of such a court in any court of competent jurisdiction.

[Alternative **Section 5.2 Arbitration** text for intergovernmental organizations or governmental entities or other special circumstances:

**“Arbitration.** Disputes arising under or in connection with this Agreement, including requests for specific performance, will be resolved through binding arbitration conducted pursuant to the rules of the International Court of Arbitration of the International Chamber of Commerce. The arbitration will be conducted in the English language and will occur in Geneva, Switzerland, unless another location is mutually agreed upon by Registry Operator and ICANN. Any arbitration will be in front of a single arbitrator, unless (i) ICANN is seeking punitive or exemplary damages, or operational sanctions, or (ii) the parties agree in writing to a greater number of arbitrators. In either case of clauses (i) or (ii) in the preceding sentence, the arbitration will be in front of three arbitrators with each party selecting one arbitrator and the two selected arbitrators selecting the third arbitrator. In order to expedite the arbitration and limit its cost, the arbitrator(s) shall establish page limits for the parties' filings in conjunction with the arbitration, and should the arbitrator(s) determine that a hearing is necessary, the hearing shall be limited to one (1) calendar day, provided that in any arbitration in which ICANN is seeking punitive or exemplary damages, or operational sanctions, the hearing may be extended for ~~an~~one (1) additional number of days~~calendar day~~ if agreed upon by the parties or ordered by the arbitrator(s) based on the arbitrator(s) independent determination or the reasonable request of one of the parties thereto. The prevailing party in the arbitration will have the right to recover its costs and reasonable attorneys' fees, which the arbitrator(s) shall include in the awards. In ~~any proceeding, ICANN may request the appointed arbitrators award punitive or exemplary damages, or operational sanctions (including without limitation an order temporarily restricting Registry Operator's right to sell new registrations)~~ in the event the arbitrators determine that Registry Operator has been repeatedly and willfully in fundamental and material breach of its obligations set forth in Article 2, Article 6 or Section 5.4 of this Agreement, ICANN may request the arbitrators award punitive or exemplary damages, or operational sanctions (including without limitation an order temporarily restricting Registry Operator's right to sell new registrations). In any litigation involving ICANN concerning this Agreement, jurisdiction and exclusive venue for such litigation will be in a court located in Geneva, Switzerland, unless an another location is mutually agreed

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upon by Registry Operator and ICANN; however, the parties will also have the right to enforce a judgment of such a court in any court of competent jurisdiction.”]

**5.3 Limitation of Liability.** ICANN’s aggregate monetary liability for violations of this Agreement will not exceed an amount equal to the Registry-Level Fees paid by Registry Operator to ICANN within the preceding twelve-month period pursuant to this Agreement (excluding the Variable Registry-Level Fee set forth in Section 6.3, if any). Registry Operator’s aggregate monetary liability to ICANN for breaches of this Agreement will be limited to an amount equal to the fees paid to ICANN during the preceding twelve-month period (excluding the Variable Registry-Level Fee set forth in Section 6.3, if any), and punitive and exemplary damages, if any, awarded in accordance with Section 5.2. In no event shall either party be liable for special, punitive, exemplary or consequential damages arising out of or in connection with this Agreement or the performance or nonperformance of obligations undertaken in this Agreement, except as provided in Section 5.2. Except as otherwise provided in this Agreement, neither party makes any warranty, express or implied, with respect to the services rendered by itself, its servants or agents, or the results obtained from their work, including, without limitation, any implied warranty of merchantability, non-infringement or fitness for a particular purpose.

**5.4 Specific Performance.** Registry Operator and ICANN agree that irreparable damage could occur if any of the provisions of this Agreement was not performed in accordance with its specific terms. Accordingly, the parties agree that they each shall be entitled to seek from the arbitrator specific performance of the terms of this Agreement (in addition to any other remedy to which each party is entitled).

## ARTICLE 6.

### FEES

**6.1 Registry-Level Fees.** Registry Operator shall pay ICANN a Registry-Level Fee equal to (i) the Registry Fixed Fee of US\$6,250 per calendar quarter and (ii) the Registry-Level Transaction Fee. The Registry-Level Transaction Fee will be equal to the number of annual increments of an initial or renewal domain name registration (at one or more levels, and including renewals associated with transfers from one ICANN-accredited registrar to another, each a “Transaction”), during the applicable calendar quarter multiplied by US\$0.25; provided, however that the Registry-Level Transaction Fee shall not apply until and unless more than 50,000 domain names are registered in the TLD and shall apply thereafter to each Transaction. Registry Operator shall pay the Registry-Level Fees on a quarterly basis comprised of four equal payments by the 20th day following the end of each calendar quarter (i.e., on April 20, July 20, October 20 and January 20 for the calendar quarters ending March 31, June 30, September 30 and December 31) of the year to an account designated by ICANN.

**6.2 Cost Recovery for RSTEP.** Requests by Registry Operator for the approval of Additional Services pursuant to Section 2.1 may be referred by ICANN to the Registry Services Technical Evaluation Panel (“RSTEP”) pursuant to that process at <http://www.icann.org/en/registries/rsep/>. In the event that such requests are referred to RSTEP, Registry Operator shall remit to ICANN the invoiced cost of the RSTEP review within ten (10) business days of receipt of a copy of the RSTEP invoice from ICANN, unless ICANN determines, in its sole and absolute discretion, to pay all or any portion of the invoiced cost of such RSTEP review.

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### 6.3 Variable Registry-Level Fee.

(a) If the ICANN accredited registrars (as a group) do not approve pursuant to the terms of their registrar accreditation agreements with ICANN the variable accreditation fees established by the ICANN Board of Directors for any ICANN fiscal year, upon delivery of notice from ICANN, Registry Operator shall pay to ICANN a Variable Registry-Level Fee, which shall be paid on a fiscal quarter basis, and shall accrue as of the beginning of the first fiscal quarter of such ICANN fiscal year. The fee will be calculated and invoiced by ICANN on a quarterly basis, and shall be paid by Registry Operator within sixty (60) calendar days with respect to the first quarter of such ICANN fiscal year and within twenty (20) calendar days with respect to each remaining quarter of such ICANN fiscal year, of receipt of the invoiced amount by ICANN. The Registry Operator may invoice and collect the Variable Registry-Level Fees from the registrars who are party to a registry-registrar agreement with Registry Operator (which agreement may specifically provide for the reimbursement of Variable Registry-Level Fees paid by Registry Operator pursuant to this Section 6.3), provided that the fees shall be invoiced to all ICANN accredited registrars if invoiced to any. The Variable Registry-Level Fee, if collectible by ICANN, shall be an obligation of Registry Operator and shall be due and payable as provided in this Section 6.3 irrespective of Registry Operator's ability to seek and obtain reimbursement of such fee from registrars. In the event ICANN later collects variable accreditation fees for which Registry Operator has paid ICANN a Variable Registry-Level Fee, ICANN shall reimburse the Registry Operator an appropriate amount of the Variable Registry-Level Fee, as reasonably determined by ICANN. If the ICANN accredited registrars (as a group) do approve pursuant to the terms of their registrar accreditation agreements with ICANN the variable accreditation fees established by the ICANN Board of Directors for a fiscal year, ICANN shall not be entitled to a Variable-Level Fee hereunder for such fiscal year, irrespective of whether the ICANN accredited registrars comply with their payment obligations to ICANN during such fiscal year.

(b) The amount of the Variable Registry-Level Fee will be specified for each registrar, and may include both a per-registrar component and a transactional component. The per-registrar component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each ICANN fiscal year. The transactional component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each ICANN fiscal year but shall not exceed US\$0.25 per domain name registration (including renewals associated with transfers from one ICANN-accredited registrar to another) per year.

**6.4 Adjustments to Fees.** Notwithstanding any of the fee limitations set forth in this Article 6, commencing upon the expiration of the first year of this Agreement, and upon the expiration of each year thereafter during the Term, the then current fees set forth in Section 6.1 and Section 6.3 may be adjusted, at ICANN's discretion, by a percentage equal to the percentage change, if any, in (i) the Consumer Price Index for All Urban Consumers, U.S. City Average (1982-1984 = 100) published by the United States Department of Labor, Bureau of Labor Statistics, or any successor index (the "CPI") for the month which is one (1) month prior to the commencement of the applicable year, over (ii) the CPI published for the month which is one (1) month prior to the commencement of the immediately prior year. In the event of any such increase, ICANN shall provide notice to Registry Operator specifying the amount of such adjustment. Any fee adjustment under this Section 6.4 shall be effective as of the first day of the year in which the above calculation is made.

**6.5 Additional Fee on Late Payments.** For any payments thirty (30) calendar days or more overdue under this Agreement, Registry Operator shall pay an additional fee on late payments at the rate of 1.5% per month or, if less, the maximum rate permitted by applicable law.

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## ARTICLE 7.

### MISCELLANEOUS

#### 7.1 Indemnification of ICANN.

(a) Registry Operator shall indemnify and defend ICANN and its directors, officers, employees, and agents (collectively, “Indemnitees”) from and against any and all third-party claims, damages, liabilities, costs, and expenses, including reasonable legal fees and expenses, arising out of or relating to intellectual property ownership rights with respect to the TLD, the delegation of the TLD to Registry Operator, Registry Operator’s operation of the registry for the TLD or Registry Operator’s provision of Registry Services, provided that Registry Operator shall not be obligated to indemnify or defend any Indemnitee to the extent the claim, damage, liability, cost or expense arose: (i) due to the actions or omissions of ICANN, its subcontractors, panelists or evaluators specifically related to and occurring during the registry TLD application process (other than actions or omissions requested by or for the benefit of Registry Operator), or (ii) due to a breach by ICANN of any obligation contained in this Agreement or any willful misconduct by ICANN. This ~~section~~ Section shall not be deemed to require Registry Operator to reimburse or otherwise indemnify ICANN for costs associated with the negotiation or execution of this Agreement, or with monitoring or management of the parties’ respective obligations hereunder. Further, this Section shall not apply to any request for attorney’s fees in connection with any litigation or arbitration between or among the parties, which shall be governed by Article 5 or otherwise awarded by a court or arbitrator.

[Alternative **Section 7.1(a)** text for intergovernmental organizations or governmental entities:

“Registry Operator shall use its best efforts to cooperate with ICANN in order to ensure that ICANN does not incur any costs associated with claims, damages, liabilities, costs and expenses, including reasonable legal fees and expenses, arising out of or relating to intellectual property ownership rights with respect to the TLD, the delegation of the TLD to Registry Operator, Registry Operator’s operation of the registry for the TLD or Registry Operator’s provision of Registry Services, provided that Registry Operator shall not be obligated to provide such cooperation to the extent the claim, damage, liability, cost or expense arose due to a breach by ICANN of any of its obligations contained in this Agreement or any willful misconduct by ICANN. This Section shall not be deemed to require Registry Operator to reimburse or otherwise indemnify ICANN for costs associated with the negotiation or execution of this Agreement, or with monitoring or management of the parties’ respective obligations hereunder. Further, this Section shall not apply to any request for attorney’s fees in connection with any litigation or arbitration between or among the parties, which shall be governed by Article 5 or otherwise awarded by a court or arbitrator.”]

(b) For any claims by ICANN for indemnification whereby multiple registry operators (including Registry Operator) have engaged in the same actions or omissions that gave rise to the claim, Registry Operator’s aggregate liability to indemnify ICANN with respect to such claim shall be limited to a percentage of ICANN’s total claim, calculated by dividing the number of total domain names under registration with Registry Operator within the TLD (which names under registration shall be calculated consistently with Article 6 hereof for any applicable quarter) by the total number of domain names under registration within all top level domains for which the registry operators thereof are engaging in the same acts or omissions giving rise to such claim. For the purposes of reducing Registry Operator’s liability under Section 7.1(a) pursuant to this Section 7.1(b), Registry Operator shall have the burden of identifying the other registry operators that are engaged in the same actions or omissions that gave rise to the claim, and demonstrating, to ICANN’s reasonable satisfaction, such other registry

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operators' culpability for such actions or omissions. For the avoidance of doubt, in the event that a registry operator is engaged in the same acts or omissions giving rise to the claims, but such registry operator(s) do not have the same or similar indemnification obligations to ICANN as set forth in Section 7.1(a) above, the number of domains under management by such registry operator(s) shall nonetheless be included in the calculation in the preceding sentence. [*Note: This Section 7.1(b) is inapplicable to intergovernmental organizations or governmental entities.*]

**7.2 Indemnification Procedures.** If any third-party claim is commenced that is indemnified under Section 7.1 above, ICANN shall provide notice thereof to Registry Operator as promptly as practicable. Registry Operator shall be entitled, if it so elects, in a notice promptly delivered to ICANN, to immediately take control of the defense and investigation of such claim and to employ and engage attorneys reasonably acceptable to ICANN to handle and defend the same, at Registry Operator's sole cost and expense, provided that in all events ICANN will be entitled to control at its sole cost and expense the litigation of issues concerning the validity or interpretation of ~~ICANN~~ ICANN's policies, Bylaws or conduct. ICANN shall cooperate, at Registry Operator's cost and expense, in all reasonable respects with Registry Operator and its attorneys in the investigation, trial, and defense of such claim and any appeal arising therefrom, and may, at its own cost and expense, participate, through its attorneys or otherwise, in such investigation, trial and defense of such claim and any appeal arising therefrom. No settlement of a claim that involves a remedy affecting ICANN other than the payment of money in an amount that is fully indemnified by Registry Operator will be entered into without the consent of ICANN. If Registry Operator does not assume full control over the defense of a claim subject to such defense in accordance with this Section 7.2, ICANN will have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of Registry Operator and Registry Operator shall cooperate in such defense. [*Note: This Section 7.2 is inapplicable to intergovernmental organizations or governmental entities.*]

**7.3 Defined Terms.** For purposes of this Agreement, unless such definitions are amended pursuant to a Consensus Policy at a future date, in which case the following definitions shall be deemed amended and restated in their entirety as set forth in such Consensus Policy, Security and Stability shall be defined as follows:

(a) For the purposes of this Agreement, an effect on "Security" shall mean (1) the unauthorized disclosure, alteration, insertion or destruction of registry data, or (2) the unauthorized access to or disclosure of information or resources on the Internet by systems operating in accordance with all applicable standards.

(b) For purposes of this Agreement, an effect on "Stability" shall refer to (1) lack of compliance with applicable relevant standards that are authoritative and published by a well-established and recognized Internet standards body, such as the relevant Standards-Track or Best Current Practice Requests for Comments ("RFCs") sponsored by the Internet Engineering Task Force; or (2) the creation of a condition that adversely affects the throughput, response time, consistency or coherence of responses to Internet servers or end systems operating in accordance with applicable relevant standards that are authoritative and published by a well-established and recognized Internet standards body, such as the relevant Standards-Track or Best Current Practice RFCs, and relying on Registry Operator's delegated information or provisioning of services.

**7.4 No Offset.** All payments due under this Agreement will be made in a timely manner throughout the Term and notwithstanding the pendency of any dispute (monetary or otherwise) between Registry Operator and ICANN.

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**7.5 Change in Control; Assignment and Subcontracting.** Neither party may assign this Agreement without the prior written approval of the other party, which approval will not be unreasonably withheld. Notwithstanding the foregoing, ICANN may assign this Agreement in conjunction with a reorganization or re-incorporation of ICANN to another nonprofit corporation or similar entity organized in the same legal jurisdiction in which ICANN is currently organized for the same or substantially the same purposes. For purposes of this Section 7.5, a direct or indirect change of control of Registry Operator or any material subcontracting arrangement with respect to the operation of the registry for the TLD shall be deemed an assignment. ICANN shall be deemed to have reasonably withheld its consent to any such a direct or indirect change of control or subcontracting arrangement in the event that ICANN reasonably determines that the person or entity acquiring control of Registry Operator or entering into such subcontracting arrangement (or the ultimate parent entity of such acquiring or subcontracting entity) does not meet the ICANN-adopted registry operator criteria or qualifications then in effect. In addition, without limiting the foregoing, Registry Operator must provide no less than thirty (30) calendar days advance notice to ICANN of any material subcontracting arrangements, and any agreement to subcontract portions of the operations of the TLD must mandate compliance with all covenants, obligations and agreements by Registry Operator hereunder, and Registry Operator shall continue to be bound by such covenants, obligations and agreements. Without limiting the foregoing, Registry Operator must also provide no less than thirty (30) calendar days advance notice to ICANN prior to the consummation of any transaction anticipated to result in a direct or indirect change of control of Registry Operator. Such change of control notification shall include a statement that affirms that the ultimate parent entity of the party acquiring such control meets the ICANN-adopted specification or policy on registry operator criteria then in effect, and affirms that Registry Operator is in compliance with its obligations under this Agreement. Within thirty (30) calendar days of such notification, ICANN may request additional information from Registry Operator establishing compliance with this Agreement, in which case Registry Operator must supply the requested information within fifteen (15) calendar days. If ICANN fails to expressly provide or withhold its consent to any direct or indirect change of control of Registry Operator or any material subcontracting arrangement within thirty (30) (or, if ICANN has requested additional information from Registry Operator as set forth above, sixty (60)) calendar days of the receipt of written notice of such transaction from Registry Operator, ICANN shall be deemed to have consented to such transaction. In connection with any such transaction, Registry Operator shall comply with the Registry Transition Process.

**7.6 Amendments and Waivers.**

(a) If ICANN determines that an amendment to this Agreement (including to the Specifications referred to herein) and all other registry agreements between ICANN and the Applicable Registry Operators (the “Applicable Registry Agreements”) is desirable (each, a “Special Amendment”), ICANN may submit a Special Amendment for approval by the Applicable Registry Operators pursuant to the process set forth in this Section 7.6, provided that a Special Amendment is not a Restricted Amendment (as defined below). Prior to submitting a Special Amendment for such approval, ICANN shall first consult in good faith with the Working Group (as defined below) regarding the form and substance of a Special Amendment. The duration of such consultation shall be reasonably determined by ICANN based on the substance of the Special Amendment. Following such consultation, ICANN may propose the adoption of a Special Amendment by publicly posting such amendment on its website for no less than thirty (30) calendar days (the “Posting Period”) and providing notice of such amendment by ICANN to the Applicable Registry Operators in accordance with Section 7.8. ICANN will consider the public comments submitted on a Special Amendment during the Posting Period (including comments submitted by the Applicable Registry Operators).

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(b) If, within two (2) calendar years of the expiration of the Posting Period (the “Approval Period”), (i) the ICANN Board of Directors approves a Special Amendment (which may be in a form different than submitted for public comment) and (ii) such Special Amendment receives Registry Operator Approval (as defined below), such Special Amendment shall be deemed approved (an “Approved Amendment”) by the Applicable Registry Operators (the last date on which such approvals are obtained is herein referred to as the “Amendment Approval Date”) and shall be effective and deemed an amendment to this Agreement upon sixty (60) calendar days notice from ICANN to Registry Operator (the “Amendment Effective Date”). In the event that a Special Amendment is not approved by the ICANN Board of Directors or does not receive Registry Operator Approval within the Approval Period, the Special Amendment will have no effect. The procedure used by ICANN to obtain Registry Operator Approval shall be designed to document the written approval of the Applicable Registry Operators, which may be in electronic form.

(c) During the thirty (30) calendar day period following the Amendment Approval Date, Registry Operator (so long as it did not vote in favor of the Approved Amendment) may apply in writing to ICANN for an exemption from the Approved Amendment (each such request submitted by Registry Operator hereunder, an “Exemption Request”). Each Exemption Request will set forth the basis for such request and provide detailed support for an exemption from the Approved Amendment. An Exemption Request may also include a detailed description and support for any alternatives to, or a variation of, the Approved Amendment proposed by such Registry Operator. An Exemption Request may only be granted upon a clear and convincing showing by Registry Operator that compliance with the Approved Amendment conflicts with applicable laws or would have a material adverse effect on the long-term financial condition or results of operations of Registry Operator. No Exemption Request will be granted if ICANN determines, in its reasonable discretion, that granting such Exemption Request would be materially harmful to registrants or result in the denial of a direct benefit to registrants. Within ninety (90) calendar days of ICANN’s receipt of an Exemption Request, ICANN shall either approve (which approval may be conditioned or consist of alternatives to or a variation of the Approved Amendment) or deny the Exemption Request in writing, during which time the Approved Amendment will not amend this Agreement. If the Exemption Request is approved by ICANN, the Approved Amendment will not amend this Agreement. If such Exemption Request is denied by ICANN, the Approved Amendment will amend this Agreement as of the Amendment Effective Date (or, if such date has passed, such Approved Amendment shall be deemed effective immediately on the date of such denial), provided that Registry Operator may, within thirty (30) calendar days following receipt of ICANN’s determination, appeal ICANN’s decision to deny the Exemption Request pursuant to the dispute resolution procedures set forth in Article 5. The Approved Amendment will be deemed not to have amended this Agreement during the pendency of the dispute resolution process. For avoidance of doubt, only Exemption Requests submitted by Registry Operator that are approved by ICANN pursuant to this Section 7.6(c) or through an arbitration decision pursuant to Article 5 shall exempt Registry Operator from any Approved Amendment, and no exemption request granted to any other Applicable Registry Operator (whether by ICANN or through arbitration) shall have any effect under this Agreement or exempt Registry Operator from any Approved Amendment.

(d) Except as set forth in this Section 7.6, no amendment, supplement or modification of this Agreement or any provision hereof shall be binding unless executed in writing by both parties, and nothing in this Section 7.6 shall restrict ICANN and Registry Operator from entering into bilateral amendments and modifications to this Agreement negotiated solely between the two parties. No waiver of any provision of this Agreement shall be binding unless evidenced by a writing signed by the party waiving compliance with such provision. No waiver of any of the provisions of this Agreement or failure to enforce any of the provisions hereof shall be deemed or shall constitute a waiver of any other

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provision hereof, nor shall any such waiver constitute a continuing waiver unless otherwise expressly provided. For the avoidance of doubt, nothing in this Section 7.6(+) shall be deemed to limit Registry Operator's obligation to comply with Section 2.2.

(e) For purposes of this Agreement, the following terms shall have the following meanings:

(i) "Applicable Registry Operators" means, collectively, the registry operators of the top-level domains party to a registry agreement that contains a provision similar to this Section 7.6, including Registry Operator.

(ii) "Registry Operator Approval" means the receipt of each of the following: (A) the affirmative approval of the Applicable Registry Operators whose payments to ICANN accounted for two-thirds of the total amount of fees (converted to U.S. dollars, if applicable) paid to ICANN by all the Applicable Registry Operators during the immediately previous calendar year pursuant to the Applicable Registry Agreements, and (B) the affirmative approval of a majority of the Applicable Registry Operators at the time such approval is obtained. For avoidance of doubt, with respect to clause (B), each Applicable Registry Operator shall have one vote for each top-level domain operated by such Registry Operator pursuant to an Applicable Registry Agreement.

(iii) "Restricted Amendment" means the following: (i) an amendment of Specification 1, (ii) except to the extent addressed in Section 2.10 hereof, an amendment that specifies the price charged by Registry Operator to registrars for domain name registrations, (iii) an amendment to the definition of Registry Services as set forth in the first paragraph of Section ~~2.1~~ of Specification 6, or (iv) an amendment to the length of the Term.

(iv) "Working Group" means representatives of the Applicable Registry Operators and other members of the community that ICANN appoints, from time to time, to serve as a working group to consult on amendments to the Applicable Registry Agreements (excluding bilateral amendments pursuant to Section 7.6(d)).

**7.7 No Third-Party Beneficiaries.** This Agreement will not be construed to create any obligation by either ICANN or Registry Operator to any non-party to this Agreement, including any registrar or registered name holder.

**7.8 General Notices.** Except for notices pursuant to Section 7.6, all notices to be given under or in relation to this Agreement will be given either (i) in writing at the address of the appropriate party as set forth below or (ii) via facsimile or electronic mail as provided below, unless that party has given a notice of change of postal or email address, or facsimile number, as provided in this agreement. All notices under Section 7.6 shall be given by both posting of the applicable information on ICANN's web site and transmission of such information to Registry Operator by electronic mail. Any change in the contact information for notice below will be given by the party within thirty (30) calendar days of such change. Notices, designations, determinations, and specifications made under this Agreement will be in the English language. Other than notices under Section 7.6, any notice required by this Agreement will be deemed to have been properly given (i) if in paper form, when delivered in person or via courier service with confirmation of receipt or (ii) if via facsimile or by electronic mail, upon confirmation of receipt by the recipient's facsimile machine or email server, provided that such notice via facsimile or

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electronic mail shall be followed by a copy sent by regular postal mail service within two (2) business days. Any notice required by Section 7.6 will be deemed to have been given when electronically posted on ICANN's website and upon confirmation of receipt by the email server. In the event other means of notice become practically achievable, such as notice via a secure website, the parties will work together to implement such notice means under this Agreement.

If to ICANN, addressed to:  
 Internet Corporation for Assigned Names and Numbers  
 4676 Admiralty Way, Suite 330  
 Marina Del Rey, California 90292  
 Telephone: 1-310-823-9358  
 Facsimile: 1-310-823-8649  
 Attention: President and CEO

With a Required Copy to: General Counsel  
 Email: (As specified from time to time.)

If to Registry Operator, addressed to:

[\_\_\_\_\_]
   
[\_\_\_\_\_]
   
[\_\_\_\_\_]

Telephone:  
 Facsimile:  
 Attention:

With a Required Copy to:  
 Email: (As specified from time to time.)

**7.9 Entire Agreement.** This Agreement (including those specifications and documents incorporated by reference to URL locations which form a part of it) constitutes the entire agreement of the parties hereto pertaining to the operation of the TLD and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, between the parties on that subject.

**7.10 English Language Controls.** Notwithstanding any translated version of this Agreement and/or specifications that may be provided to Registry Operator, the English language version of this Agreement and all referenced specifications are the official versions that bind the parties hereto. In the event of any conflict or discrepancy between any translated version of this Agreement and the English language version, the English language version controls. Notices, designations, determinations, and specifications made under this Agreement shall be in the English language.

**7.11 Ownership Rights.** Nothing contained in this Agreement shall be construed as establishing or granting to Registry Operator any property ownership rights or interests in the TLD or the letters, words, symbols or other characters making up the TLD string.

**7.12 Severability.** This Agreement shall be deemed severable; the invalidity or unenforceability of any term or provision of this Agreement shall not affect the validity or enforceability of the balance of this Agreement or of any other term hereof, which shall remain in full force and effect. If any of the provisions hereof are determined to be invalid or unenforceable, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible.

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~~**7.13 Government Support.** In the event that the TLD was delegated to Registry Operator pursuant to the consent of a governmental entity to use a geographic name related to the jurisdiction of such governmental entity, the parties agree that, notwithstanding any provision contained in this Agreement, in the event of a dispute between such governmental entity and Registry Operator, ICANN may implement the order of any court sitting in such jurisdiction in favor of such governmental entity related to the TLD.~~

**7.13 Court Orders.** ICANN will respect any order from a court of competent jurisdiction, including any orders from any jurisdiction where the consent or non-objection of the government was a requirement for the delegation of the TLD. Notwithstanding any other provision of this agreement, ICANN's implementation of any such order will not be a breach of this Agreement.

*[Note: The following section is applicable to intergovernmental organizations or governmental entities only.]*

#### **7.14 Special Provision Relating to Intergovernmental Organizations or Governmental Entities.**

(a) ICANN acknowledges that Registry Operator is an entity subject to public international law, including international treaties applicable to Registry Operator (such public international law and treaties, collectively hereinafter the “Applicable Laws”). Nothing in this Agreement and its related specifications shall be construed or interpreted to require Registry Operator to violate Applicable Laws or prevent compliance therewith. The Parties agree that Registry Operator’s compliance with Applicable Laws shall not constitute a breach of this Agreement.

(b) In the event Registry Operator reasonably determines that any provision of this Agreement and its related specifications, or any decisions or policies of ICANN referred to in this Agreement, including but not limited to Temporary Policies and Consensus Policies (such provisions, specifications and policies, collectively hereinafter, “ICANN Requirements”), may conflict with or violate Applicable Law (hereinafter, a “Potential Conflict”), Registry Operator shall provide detailed notice (a “Notice”) of such Potential Conflict to ICANN as early as possible and, in the case of a Potential Conflict with a proposed Consensus Policy, no later than the end of any public comment period on such proposed Consensus Policy. In the event Registry Operator determines that there is Potential Conflict between a proposed Applicable Law and any ICANN Requirement, Registry Operator shall provide detailed Notice of such Potential Conflict to ICANN as early as possible and, in the case of a Potential Conflict with a proposed Consensus Policy, no later than the end of any public comment period on such proposed Consensus Policy.

(c) As soon as practicable following such review, the parties shall attempt to resolve the Potential Conflict by cooperative engagement pursuant to the procedures set forth in Section 5.1. In addition, Registry Operator shall use its best efforts to eliminate or minimize any impact arising from such Potential Conflict between Applicable Laws and any ICANN Requirement. If, following such cooperative engagement, Registry Operator determines that the Potential Conflict constitutes an actual conflict between any ICANN Requirement, on the one hand, and Applicable Laws, on the other hand, then ICANN shall waive compliance with such ICANN Requirement (provided that the parties shall negotiate in good faith on a continuous basis thereafter to mitigate or eliminate the effects of such non-compliance on ICANN), unless ICANN reasonably and objectively determines that the failure of Registry Operator to comply with such ICANN Requirement would constitute a threat to the Security and Stability of Registry Services, the Internet or the DNS (hereinafter, an “ICANN Determination”). Following receipt of notice by Registry Operator of such ICANN Determination, Registry Operator shall be afforded

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a period of ninety (90) calendar days to resolve such conflict with an Applicable Law. If the conflict with an Applicable Law is not resolved to ICANN's complete satisfaction during such period, Registry Operator shall have the option to submit, within ten (10) calendar days thereafter, the matter to binding arbitration as defined in subsection (d) below. If during such period, Registry Operator does not submit the matter to arbitration pursuant to subsection (d) below, ICANN may, upon notice to Registry Operator, terminate this Agreement with immediate effect.

(d) If Registry Operator disagrees with an ICANN Determination, Registry Operator may submit the matter to binding arbitration pursuant to the provisions of Section 5.2, except that the sole issue presented to the arbitrator for determination will be whether or not ICANN reasonably and objectively reached the ICANN Determination. For the purposes of such arbitration, ICANN shall present evidence to the arbitrator supporting the ICANN Determination. If the arbitrator determines that ICANN did not reasonably and objectively reach the ICANN Determination, then ICANN shall waive Registry Operator's compliance with the subject ICANN Requirement. If the arbitrators or pre-arbitral referee, as applicable, determine that ICANN did reasonably and objectively reach the ICANN Determination, then, upon notice to Registry Operator, ICANN may terminate this Agreement with immediate effect.

(e) Registry Operator hereby represents and warrants that, to the best of its knowledge as of the date of execution of this Agreement, no existing ICANN Requirement conflicts with or violates any Applicable Law.

(f) Notwithstanding any other provision of this Section 7.14, following an ICANN Determination and prior to a finding by an arbitrator pursuant to Section 7.14(d) above, ICANN may, subject to prior consultations with Registry Operator, take such reasonable technical measures as it deems necessary to ensure the Security and Stability of Registry Services, the Internet and the DNS. These reasonable technical measures shall be taken by ICANN on an interim basis, until the earlier of the date of conclusion of the arbitration procedure referred to in Section 7.14(d) above or the date of complete resolution of the conflict with an Applicable Law. In case Registry Operator disagrees with such technical measures taken by ICANN, Registry Operator may submit the matter to binding arbitration pursuant to the provisions of Section 5.2 above, during which process ICANN may continue to take such technical measures. In the event that ICANN takes such measures, Registry Operator shall pay all costs incurred by ICANN as a result of taking such measures. In addition, in the event that ICANN takes such measures, ICANN shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable.

\* \* \* \* \*

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

**INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS**

By: \_\_\_\_\_  
[\_\_\_\_\_] President and CEO

Date:

**[Registry Operator]**

By: \_\_\_\_\_  
[\_\_\_\_\_] \_\_\_\_\_  
[\_\_\_\_\_]

Date:

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**EXHIBIT A**

**Approved Services**

## SPECIFICATION 1

### CONSENSUS POLICIES AND TEMPORARY POLICIES SPECIFICATION

#### 1. Consensus Policies.

- 1.1. “*Consensus Policies*” are those policies established (1) pursuant to the procedure set forth in ICANN's Bylaws and due process, and (2) covering those topics listed in Section 1.2 of this document. The Consensus Policy development process and procedure set forth in ICANN's Bylaws may be revised from time to time in accordance with the process set forth therein.
- 1.2. Consensus Policies and the procedures by which they are developed shall be designed to produce, to the extent possible, a consensus of Internet stakeholders, including the operators of gTLDs. Consensus Policies shall relate to one or more of the following:
  - 1.2.1. issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, security and/or stability of the Internet or Domain Name System (“DNS”);
  - 1.2.2. functional and performance specifications for the provision of Registry Services;
  - 1.2.3. Security and Stability of the registry database for the TLD;
  - 1.2.4. registry policies reasonably necessary to implement Consensus Policies relating to registry operations or registrars;
  - 1.2.5. resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names); or
  - 1.2.6. restrictions on cross-ownership of registry operators and registrars or registrar resellers and regulations and restrictions with respect to registry operations and the use of registry and registrar data in the event that a registry operator and a registrar or registrar reseller are affiliated.
- 1.3. Such categories of issues referred to in Section 1.2 shall include, without limitation:
  - 1.3.1. principles for allocation of registered names in the TLD (e.g., first-come/first-served, timely renewal, holding period after expiration);
  - 1.3.2. prohibitions on warehousing of or speculation in domain names by registries or registrars;
  - 1.3.3. reservation of registered names in the TLD that may not be registered initially or that may not be renewed due to reasons reasonably related to (i) avoidance of confusion among or misleading of users, (ii) intellectual property, or (iii) the technical management of the DNS or the Internet (e.g., establishment of reservations of names from registration); and
  - 1.3.4. maintenance of and access to accurate and up-to-date information concerning domain name registrations; and procedures to avoid disruptions of domain name registrations due to suspension or termination of operations by a registry operator or a registrar, including procedures for allocation of responsibility for serving registered domain names in a TLD affected by such a suspension or termination.
- 1.4. In addition to the other limitations on Consensus Policies, they shall not:

- 1.4.1. prescribe or limit the price of Registry Services;
  - 1.4.2. modify the terms or conditions for the renewal or termination of the Registry Agreement;
  - 1.4.3. modify the limitations on Temporary Policies (defined below) or Consensus Policies;
  - 1.4.4. modify the provisions in the registry agreement regarding fees paid by Registry Operator to ICANN; or
  - 1.4.5. modify ICANN's obligations to ensure equitable treatment of registry operators and act in an open and transparent manner.
2. **Temporary Policies.** Registry Operator shall comply with and implement all specifications or policies established by the Board on a temporary basis, if adopted by the Board by a vote of at least two-thirds of its members, so long as the Board reasonably determines that such modifications or amendments are justified and that immediate temporary establishment of a specification or policy on the subject is necessary to maintain the stability or security of Registry Services or the DNS ("*Temporary Policies*").
- 2.1. Such proposed specification or policy shall be as narrowly tailored as feasible to achieve those objectives. In establishing any Temporary Policy, the Board shall state the period of time for which the Temporary Policy is adopted and shall immediately implement the Consensus Policy development process set forth in ICANN's Bylaws.
    - 2.1.1. ICANN shall also issue an advisory statement containing a detailed explanation of its reasons for adopting the Temporary Policy and why the Board believes such Temporary Policy should receive the consensus support of Internet stakeholders.
    - 2.1.2. If the period of time for which the Temporary Policy is adopted exceeds 90 days, the Board shall reaffirm its temporary adoption every 90 days for a total period not to exceed one year, in order to maintain such Temporary Policy in effect until such time as it becomes a Consensus Policy. If the one year period expires or, if during such one year period, the Temporary Policy does not become a Consensus Policy and is not reaffirmed by the Board, Registry Operator shall no longer be required to comply with or implement such Temporary Policy.
3. **Notice and Conflicts.** Registry Operator shall be afforded a reasonable period of time following notice of the establishment of a Consensus Policy or Temporary Policy in which to comply with such policy or specification, taking into account any urgency involved. In the event of a conflict between Registry Services and Consensus Policies or any Temporary Policy, the Consensus Policies or Temporary Policy shall control, but only with respect to subject matter in conflict.

## SPECIFICATION 2 DATA ESCROW REQUIREMENTS

Registry Operator will engage an independent entity to act as data escrow agent (“*Escrow Agent*”) for the provision of data escrow services related to the Registry Agreement. The following Technical Specifications set forth in Part A, and Legal Requirements set forth in Part B, will be included in any data escrow agreement between Registry Operator and the Escrow Agent, under which ICANN must be named a third-party beneficiary. In addition to the following requirements, the data escrow agreement may contain other provisions that are not contradictory or intended to subvert the required terms provided below.

### PART A – TECHNICAL SPECIFICATIONS

1. **Deposits.** There will be two types of Deposits: Full and Differential. For both types, the universe of Registry objects to be considered for data escrow are those objects necessary in order to offer all of the approved Registry Services.
  - 1.1 “**Full Deposit**” will consist of data that reflects the state of the registry as of 00:00:00 UTC on each Sunday. Pending transactions at that time (i.e., transactions that have not been committed) will not be reflected in the Full Deposit.
  - 1.2 “**Differential Deposit**” means data that reflects all transactions that were not reflected in the last previous Full or Differential Deposit, as the case may be. Each Differential Deposit will contain all database transactions since the previous Deposit was completed as of 00:00:00 UTC of each day, but Sunday. Differential Deposits must include complete Escrow Records as specified below that were not included or changed since the most recent full or Differential Deposit (i.e., newly added or modified domain names). ~~Although we expect this to be an exception, it is permissible to have some minimum overlap between Differential Deposits.~~
2. **Schedule for Deposits.** Registry Operator will submit a set of escrow files on a daily basis as follows:
  - 2.1 Each Sunday, a Full Deposit must be submitted to the Escrow Agent by 23:59 UTC.
  - 2.2 The other six days of the week, the corresponding Differential Deposit must be submitted to Escrow Agent by 23:59 UTC.
3. **Escrow Format Specification.**
  - 3.1 **Deposit’s Format.** Registry objects, such as domains, contacts, name servers, registrars, etc. will be compiled into a file constructed as described in draft-arias-noguchi-registry-data-escrow, see [1]. The aforementioned document describes some elements as optional; Registry Operator will include those elements in the Deposits if they are available. Registry Operator will use the draft version available at the time of signing the Agreement, if not already an RFC. Once the specification is published as an RFC, Registry Operator will implement that specification, no later than 180 days after. UTF-8 character encoding will be used.
  - 3.2 **Extensions.** If a Registry Operator offers additional Registry Services that require submission of additional data, not included above, additional “extension schemas” shall be defined in a case by case base to represent that data. These “extension schemas” will be specified as described in [1]. Data related to the “extensions schemas” will be included in the deposit file described in section

3.1. ICANN and the respective Registry shall work together to agree on such new objects' data escrow specifications.

4. **Processing of Deposit files.** The use of compression is recommended in order to reduce electronic data transfer times, and storage capacity requirements. Data encryption will be used to ensure the privacy of registry escrow data. Files processed for compression and encryption will be in the binary OpenPGP format as per OpenPGP Message Format - RFC 4880, see [2]. Acceptable algorithms for Public-key cryptography, Symmetric-key cryptography, Hash and Compression are those enumerated in RFC 4880, not marked as deprecated in OpenPGP IANA Registry, see [3], that are also royalty-free. The process to follow for a data file in original text format is:
- (1) The file should be compressed. The suggested algorithm for compression is ZIP as per RFC 4880.
  - (2) The compressed data will be encrypted using the escrow agent's public key. The suggested algorithms for Public-key encryption are Elgamal and RSA as per RFC 4880. The suggested algorithms for Symmetric-key encryption are TripleDES, AES128 and CAST5 as per RFC 4880.
  - (3) The file may be split as necessary if, once compressed and encrypted is larger than the file size limit agreed with the escrow agent. Every part of a split file, or the whole file if split is not used, will be called a processed file in this section.
  - (4) A digital signature file will be generated for every processed file using the Registry's private key. The digital signature file will be in binary OpenPGP format as per RFC 4880 [2], and will not be compressed or encrypted. The suggested algorithms for Digital signatures are DSA and RSA as per RFC 4880. The suggested algorithm for Hashes in Digital signatures is SHA256.
  - (5) The processed files and digital signature files will then be transferred to the Escrow Agent through secure electronic mechanisms, such as, SFTP, SCP, HTTPS file upload, etc. as agreed between the Escrow Agent and the Registry Operator. Non-electronic delivery through a physical medium such as CD-ROMs, DVD-ROMs, or USB storage devices may be used if authorized by ICANN.
  - (6) The Escrow Agent will then validate every (processed) transferred data file using the procedure described in section 8.
5. **File Naming Conventions.** Files will be named according to the following convention: {gTLD}\_{YYYY-MM-DD}\_{type}\_S{#}\_R{rev}.{ext} where:
- 5.1 {gTLD} is replaced with the gTLD name; in case of an IDN-TLD, the ASCII-compatible form (A-Label) must be used;
  - 5.2 {YYYY-MM-DD} is replaced by the date corresponding to the time used as a timeline watermark for the transactions; i.e. for the Full Deposit corresponding to 2009-08-02T00:00Z, the string to be used would be "2009-08-02";
  - 5.3 {type} is replaced by:
    - (1) "full", if the data represents a Full Deposit;
    - (2) "diff", if the data represents a Differential Deposit;
  - 5.4 {#} is replaced by the position of the file in a series of files, beginning with "1"; in case of a lone file, this must be replaced by "1".
  - 5.5 {rev} is replaced by the number of revision (or resend) of the file beginning with "0".
  - 5.6 {ext} is replaced by "sig" if it is a digital signature file of the quasi-homonymous file. Otherwise it is replaced by "ryde".

6. **Distribution of Public Keys.** Each of Registry Operator and Escrow Agent will distribute its public key to the other party (Registry Operator or Escrow Agent, as the case may be) via email to an email address to be specified. Each party will confirm receipt of the other party's public key with a reply email, and the distributing party will subsequently reconfirm the authenticity of the key transmitted via offline methods, like in person meeting, telephone, etc. In this way, public key transmission is authenticated to a user able to send and receive mail via a mail server operated by the distributing party. Escrow Agent, Registry and ICANN will exchange keys by the same procedure.
7. **Notification of Deposits.** Along with the delivery of each Deposit, Registry Operator will deliver to Escrow Agent and to ICANN a written statement (which may be by authenticated e-mail) that includes a copy of the report generated upon creation of the Deposit and states that the Deposit has been inspected by Registry Operator and is complete and accurate. Registry Operator will include the Deposit's "id" and "resend" attributes in its statement. The attributes are explained in [1].
8. **Verification Procedure.**
  - (1) The signature file of each processed file is validated.
  - (2) If processed files are pieces of a bigger file, ~~it~~[the latter](#) is put together.
  - (3) Each file obtained in the previous step is then decrypted and uncompressed.
  - (4) Each data file contained in the previous step is then validated against the format defined in [1].
  - (5) If [1] includes a verification process, that will be applied at this step.  
If any discrepancy is found in any of the steps, the Deposit will be considered incomplete.
9. **References.**
  - [1] Domain Name Data Escrow Specification (work in progress), <http://tools.ietf.org/html/draft-arias-noguchi-registry-data-escrow>
  - [2] OpenPGP Message Format, <http://www.rfc-editor.org/rfc/rfc4880.txt>
  - [3] OpenPGP parameters, <http://www.iana.org/assignments/pgp-parameters/pgp-parameters.xhtml>

**PART B – LEGAL REQUIREMENTS**

1. **Escrow Agent.** Prior to entering into an escrow agreement, the Registry Operator must provide notice to ICANN as to the identity of the Escrow Agent, and provide ICANN with contact information and a copy of the relevant escrow agreement, and all amendment thereto. In addition, prior to entering into an escrow agreement, Registry Operator must obtain the consent of ICANN to (a) use the specified Escrow Agent, and (b) enter into the form of escrow agreement provided. ICANN must be expressly designated a third-party beneficiary of the escrow agreement. ICANN reserves the right to withhold its consent to any Escrow Agent, escrow agreement, or any amendment thereto, all in its sole discretion.
2. **Fees.** Registry Operator must pay, or have paid on its behalf, fees to the Escrow Agent directly. If Registry Operator fails to pay any fee by the due date(s), the Escrow Agent will give ICANN written notice of such non-payment and ICANN may pay the past-due fee(s) within ten business days after receipt of the written notice from Escrow Agent. Upon payment of the past-due fees by ICANN, ICANN shall have a claim for such amount against Registry Operator, which Registry Operator shall be required to submit to ICANN together with the next fee payment due under the Registry Agreement.
3. **Ownership.** Ownership of the Deposits during the effective term of the Registry Agreement shall remain with Registry Operator at all times. Thereafter, Registry Operator shall assign any such ownership rights (including intellectual property rights, as the case may be) in such Deposits to ICANN. In the event that during the term of the Registry Agreement any Deposit is released from escrow to ICANN, any intellectual property rights held by Registry Operator in the Deposits will automatically be licensed on a non-exclusive, perpetual, irrevocable, royalty-free, paid-up basis to ICANN or to a party designated in writing by ICANN.
4. **Integrity and Confidentiality.** Escrow Agent will be required to (i) hold and maintain the Deposits in a secure, locked, and environmentally safe facility, which is accessible only to authorized representatives of Escrow Agent, (ii) protect the integrity and confidentiality of the Deposits using commercially reasonable measures and (iii) keep and safeguard each Deposit for one year. ICANN and Registry Operator will be provided the right to inspect Escrow Agent's applicable records upon reasonable prior notice and during normal business hours. Registry Operator and ICANN will be provided with the right to designate a third-party auditor to audit Escrow Agent's compliance with the technical specifications and maintenance requirements of this Specification 2 from time to time.

If Escrow Agent receives a subpoena or any other order from a court or other judicial tribunal pertaining to the disclosure or release of the Deposits, Escrow Agent will promptly notify the Registry Operator and ICANN unless prohibited by law. After notifying the Registry Operator and ICANN, Escrow Agent shall allow sufficient time for Registry Operator or ICANN to challenge any such order, which shall be the responsibility of Registry Operator or ICANN; provided, however, that Escrow Agent does not waive its rights to present its position with respect to any such order. Escrow Agent will cooperate with the Registry Operator or ICANN to support efforts to quash or limit any subpoena, at such party's expense. Any party requesting additional assistance shall pay Escrow Agent's standard charges or as quoted upon submission of a detailed request.

5. **Copies.** Escrow Agent may be permitted to duplicate any Deposit, in order to comply with the terms and provisions of the escrow agreement.

6. **Release of Deposits.** Escrow Agent will make available for electronic download (unless otherwise requested) to ICANN or its designee, within twenty-four hours, at the Registry Operator's expense, all Deposits in Escrow Agent's possession in the event that the Escrow Agent receives a request from Registry Operator to effect such delivery to ICANN, or receives one of the following written notices by ICANN stating that:
- 6.1 the Registry Agreement has expired without renewal, or been terminated; or
  - 6.2 ICANN failed, with respect to (a) any Full Deposit or (b) five Differential Deposits within any calendar month, to receive, within five calendar days after the Deposit's scheduled delivery date, notification of receipt from Escrow Agent; (x) ICANN gave notice to Escrow Agent and Registry Operator of that failure; and (y) ICANN has not, within seven calendar days after such notice, received notice from Escrow Agent that the Deposit has been received; or
  - 6.3 ICANN has received notification from Escrow Agent of failed verification of a Full Deposit or of failed verification of five Differential Deposits within any calendar month and (a) ICANN gave notice to Registry Operator of that receipt; and (b) ICANN has not, within seven calendar days after such notice, received notice from Escrow Agent of verification of a remediated version of such Full Deposit or Differential Deposit; or
  - 6.4 Registry Operator has: (i) ceased to conduct its business in the ordinary course; or (ii) filed for bankruptcy, become insolvent or anything analogous to any of the foregoing under the laws of any jurisdiction anywhere in the world; or
  - 6.5 Registry Operator has experienced a failure of critical registry functions and ICANN has asserted its rights pursuant to Section 2.13 of the Registry Agreement; or
  - 6.6 a competent court, arbitral, legislative, or government agency mandates the release of the Deposits to ICANN.

Unless Escrow Agent has previously released the Registry Operator's Deposits to ICANN or its designee, Escrow Agent will deliver all Deposits to ICANN upon termination of the Registry Agreement or the Escrow Agreement.

7. **Verification of Deposits.**
- 7.1 Within twenty-four hours after receiving each Deposit or corrected Deposit, Escrow Agent must verify the format and completeness of each Deposit and deliver to ICANN a copy of the verification report generated for each Deposit. Reports will be delivered electronically, as specified from time to time by ICANN.
  - 7.2 If Escrow Agent discovers that any Deposit fails the verification procedures, Escrow Agent must notify, either by email, fax or phone, Registry Operator and ICANN of such nonconformity within twenty-four hours after receiving the non-conformant Deposit. Upon notification of such verification failure, Registry Operator must begin developing modifications, updates, corrections, and other fixes of the Deposit necessary for the Deposit to pass the verification procedures and deliver such fixes to Escrow Agent as promptly as possible.
8. **Amendments.** Escrow Agent and Registry Operator shall amend the terms of the Escrow Agreement to conform to this Specification 2 within ten (10) calendar days of any amendment or modification to this Specification 2. In the event of a conflict between this Specification 2 and the Escrow Agreement, this Specification 2 shall control.
9. **Indemnity.** Registry Operator shall indemnify and hold harmless Escrow Agent and each of its directors, officers, agents, employees, members, and stockholders ("Escrow Agent Indemnitees") absolutely and forever from and against any and all claims, actions, damages, suits, liabilities, obligations, costs, fees, charges, and any other expenses whatsoever, including reasonable attorneys' fees and costs, that may be asserted by a third party against any Escrow Agent

Indemnitees in connection with the Escrow Agreement or the performance of Escrow Agent or any Escrow Agent Indemnitees thereunder (with the exception of any claims based on the misrepresentation, negligence, or misconduct of Escrow Agent, its directors, officers, agents, employees, contractors, members, and stockholders). Escrow Agent shall indemnify and hold harmless Registry Operator and ICANN, and each of their respective directors, officers, agents, employees, members, and stockholders ("Indemnitees") absolutely and forever from and against any and all claims, actions, damages, suits, liabilities, obligations, costs, fees, charges, and any other expenses whatsoever, including reasonable attorneys' fees and costs, that may be asserted by a third party against any Indemnitee in connection with the misrepresentation, negligence or misconduct of Escrow Agent, its directors, officers, agents, employees and contractors.

## SPECIFICATION 3

### FORMAT AND CONTENT FOR REGISTRY OPERATOR MONTHLY REPORTING

Registry Operator shall provide one set of monthly ~~report~~reports per gTLD to \_\_\_\_\_ with the following content. ICANN may request in the future that the reports be delivered by other means and using other formats. ICANN will use reasonable commercial efforts to preserve the confidentiality of the information reported until three months after the end of the month to which the reports relate.

**1. Per-Registrar Transactions Report.** This report shall be compiled in a comma separated-value formatted file as specified in RFC 4180. The file shall be named “gTLD-transactions-yyyymm.csv”, where “gTLD” is the gTLD name; in case of an IDN-TLD, the A-label shall be used; “yyyymm” is the year and month being reported. The file shall contain the following fields per registrar:

Field #	Field Name	<del>Notes</del> <u>Description</u>
01	registrar-name	registrar's full corporate name as registered with IANA
02	iana-id	<a href="http://www.iana.org/assignments/registrar-ids">http://www.iana.org/assignments/registrar-ids</a>
03	total-domains	total domains under sponsorship
04	total-nameservers	total name servers registered for TLD
05	net-adds-1-yr	number of domains successfully registered with an initial term of one year (and not deleted within the add grace period)
06	net-adds-2-yr	number of domains successfully registered with an initial term of two years (and not deleted within the add grace period)
07	net-adds-3-yr	number of domains successfully registered with an initial term of three years (and not deleted within the add grace period)
08	net-adds-4-yr	<del>ete-</del> <u>number of domains successfully registered with an initial term of four years (and not deleted within the add grace period)</u>
09	net-adds-5-yr	<del>-"</del> <u>number of domains successfully registered with an initial term of five years (and not deleted within the add grace period)</u>
10	net-adds-6-yr	<del>-"</del> <u>number of domains successfully registered with an initial term of six years (and not deleted within the add grace period)</u>
11	net-adds-7-yr	<del>-"</del> <u>number of domains successfully registered with an initial term of seven years (and not deleted within the add grace period)</u>
12	net-adds-8-yr	<del>-"</del> <u>number of domains successfully registered with an initial term of eight years (and not deleted within the</u>

		<a href="#"><u>add grace period)</u></a>
13	net-adds-9-yr	<a href="#"><u>" "number of domains successfully registered with an initial term of nine years (and not deleted within the add grace period)</u></a>
14	net-adds-10-yr	<a href="#"><u>" "number of domains successfully registered with an initial term of ten years (and not deleted within the add grace period)</u></a>
15	net-renews-1-yr	number of domains successfully renewed either automatically or by command with a new renewal period of one year (and not deleted within the renew grace period)
16	net-renews-2-yr	number of domains successfully renewed either automatically or by command with a new renewal period of two years (and not deleted within the renew grace period)
17	net-renews-3-yr	number of domains successfully renewed either automatically or by command with a new renewal period of three years (and not deleted within the renew grace period)
18	net-renews-4-yr	<a href="#"><u>etc.number of domains successfully renewed either automatically or by command with a new renewal period of four years (and not deleted within the renew grace period)</u></a>
19	net-renews-5-yr	<a href="#"><u>" "number of domains successfully renewed either automatically or by command with a new renewal period of five years (and not deleted within the renew grace period)</u></a>
20	net-renews-6-yr	<a href="#"><u>" "number of domains successfully renewed either automatically or by command with a new renewal period of six years (and not deleted within the renew grace period)</u></a>
21	net-renews-7-yr	<a href="#"><u>" "number of domains successfully renewed either automatically or by command with a new renewal period of seven years (and not deleted within the renew grace period)</u></a>
22	net-renews-8-yr	<a href="#"><u>" "number of domains successfully renewed either automatically or by command with a new renewal period of eight years (and not deleted within the renew grace period)</u></a>
23	net-renews-9-yr	<a href="#"><u>" "number of domains successfully renewed either automatically or by command with a new renewal period of nine years (and not deleted within the renew grace period)</u></a>

24	net-renews-10-yr	<u>"number of domains successfully renewed either automatically or by command with a new renewal period of ten years (and not deleted within the renew grace period)"</u>
25	transfer-gaining-successful	transfers initiated by this registrar that were ack'd by the other registrar – either by command or automatically
26	transfer-gaining-nacked	transfers initiated by this registrar that were n'acked by the other registrar
27	transfer-losing-successful	transfers initiated by another registrar that this registrar ack'd – either by command or automatically
28	transfer-losing-nacked	transfers initiated by another registrar that this registrar n'acked
29	transfer-disputed-won	number of transfer disputes in which this registrar prevailed
30	transfer-disputed-lost	number of transfer disputes this registrar lost
31	transfer-disputed-nodecision	number of transfer disputes involving this registrar with a split or no decision
32	deleted-domains-grace	domains deleted within the add grace period
33	deleted-domains-nograce	domains deleted outside the add grace period
34	restored-domains	domain names restored from redemption period
35	restored-noreport	total number of restored names for which the registrar failed to submit a restore report
36	agp-exemption-requests	total number of AGP (add grace period) exemption requests
37	agp-exemptions-granted	total number of AGP (add grace period) exemption requests granted
38	agp-exempted-domains	total number of names affected by granted AGP (add grace period) exemption requests
<u>39</u>	<u>attempted-adds</u>	<u>number of attempted (successful and failed) domain name create commands</u>

The first line shall include the field names exactly as described in the table above as a “header line” as described in section 2 of RFC 4180. The last line of each report ~~should~~shall include totals for each column across all registrars; the first field of this line shall read “Totals” while the second field shall be left empty in that line. No other lines besides the ones described above shall be included. Line breaks shall be <U+000D, U+000A> as described in RFC 4180.

~~[Drafting note to community on change from v4: The requirement for an SLA report was removed given ICANN’s plan to build an SLA monitoring system, as described in Specification 6, that would produce those results directly. ICANN plans to periodically publish results from the SLA monitoring system in order to allow the registrants and other interested parties access to this information.]~~

**2. Registry Functions Activity Report.** This report shall be compiled in a comma separated-value formatted file as specified in RFC 4180. The file shall be named “gTLD-activity-yyyymm.csv”, where “gTLD” is the gTLD name; in case of an IDN-TLD, the A-label shall be used; “yyyymm” is the year and month being reported. The file shall contain the following fields:

<u>Field #</u>	<u>Field Name</u>	<u>Description</u>
<u>01</u>	<u>operational-registrars</u>	<u>number of operational registrars at the end of the reporting period</u>
<u>02</u>	<u>ramp-up-registrars</u>	<u>number of registrars that have received a password for access to OT&amp;E at the end of the reporting period</u>
<u>03</u>	<u>pre-ramp-up-registrars</u>	<u>number of registrars that have requested access, but have not yet entered the ramp-up period at the end of the reporting period</u>
<u>04</u>	<u>zfa-passwords</u>	<u>number of active zone file access passwords at the end of the reporting period</u>
<u>05</u>	<u>whois-43-queries</u>	<u>number of WHOIS (port-43) queries responded during the reporting period</u>
<u>06</u>	<u>web-whois-queries</u>	<u>number of Web-based Whois queries responded during the reporting period, not including searchable Whois</u>
<u>07</u>	<u>searchable-whois-queries</u>	<u>number of searchable Whois queries responded during the reporting period, if offered</u>
<u>08</u>	<u>dns-udp-queries-received</u>	<u>number of DNS queries received over UDP transport during the reporting period</u>
<u>09</u>	<u>dns-udp-queries-responded</u>	<u>number of DNS queries received over UDP transport that were responded during the reporting period</u>
<u>10</u>	<u>dns-tcp-queries-received</u>	<u>number of DNS queries received over TCP transport during the reporting period</u>
<u>11</u>	<u>dns-tcp-queries-responded</u>	<u>number of DNS queries received over TCP transport that were responded during the reporting period</u>
<u>12</u>	<u>srs-dom-check</u>	<u>number of SRS (EPP and any other interface) domain name “check” requests responded during the reporting period</u>
<u>13</u>	<u>srs-dom-create</u>	<u>number of SRS (EPP and any other interface) domain name “create” requests responded during the reporting period</u>
<u>14</u>	<u>srs-dom-delete</u>	<u>number of SRS (EPP and any other interface) domain name “delete” requests responded during the reporting period</u>
<u>15</u>	<u>srs-dom-info</u>	<u>number of SRS (EPP and any other interface) domain name “info” requests responded during the reporting period</u>
<u>16</u>	<u>srs-dom-renew</u>	<u>number of SRS (EPP and any other interface) domain name “renew” requests responded during the reporting period</u>

<u>17</u>	<u>srs-dom-rgp-restore-report</u>	<u>number of SRS (EPP and any other interface) domain name RGP “restore” requests responded during the reporting period</u>
<u>18</u>	<u>srs-dom-rgp-restore-request</u>	<u>number of SRS (EPP and any other interface) domain name RGP “restore” requests delivering a restore report responded during the reporting period</u>
<u>19</u>	<u>srs-dom-transfer-approve</u>	<u>number of SRS (EPP and any other interface) domain name “transfer” requests to approve transfers responded during the reporting period</u>
<u>20</u>	<u>srs-dom-transfer-cancel</u>	<u>number of SRS (EPP and any other interface) domain name “transfer” requests to cancel transfers responded during the reporting period</u>
<u>21</u>	<u>srs-dom-transfer-query</u>	<u>number of SRS (EPP and any other interface) domain name “transfer” requests to query about a transfer responded during the reporting period</u>
<u>22</u>	<u>srs-dom-transfer-reject</u>	<u>number of SRS (EPP and any other interface) domain name “transfer” requests to reject transfers responded during the reporting period</u>
<u>23</u>	<u>srs-dom-transfer-request</u>	<u>number of SRS (EPP and any other interface) domain name “transfer” requests to request transfers responded during the reporting period</u>
<u>24</u>	<u>srs-dom-update</u>	<u>number of SRS (EPP and any other interface) domain name “update” requests (not including RGP restore requests) responded during the reporting period</u>
<u>25</u>	<u>srs-host-check</u>	<u>number of SRS (EPP and any other interface) host “check” requests responded during the reporting period</u>
<u>26</u>	<u>srs-host-create</u>	<u>number of SRS (EPP and any other interface) host “create” requests responded during the reporting period</u>
<u>27</u>	<u>srs-host-delete</u>	<u>number of SRS (EPP and any other interface) host “delete” requests responded during the reporting period</u>
<u>28</u>	<u>srs-host-info</u>	<u>number of SRS (EPP and any other interface) host “info” requests responded during the reporting period</u>
<u>29</u>	<u>srs-host-update</u>	<u>number of SRS (EPP and any other interface) host “update” requests responded during the reporting period</u>
<u>30</u>	<u>srs-cont-check</u>	<u>number of SRS (EPP and any other interface) contact “check” requests responded during the reporting period</u>
<u>31</u>	<u>srs-cont-create</u>	<u>number of SRS (EPP and any other interface) contact “create” requests responded during the reporting period</u>
<u>32</u>	<u>srs-cont-delete</u>	<u>number of SRS (EPP and any other interface) contact “delete” requests responded during the reporting period</u>

<u>33</u>	<u>srs-cont-info</u>	<u>number of SRS (EPP and any other interface) contact “info” requests responded during the reporting period</u>
<u>34</u>	<u>srs-cont-transfer-approve</u>	<u>number of SRS (EPP and any other interface) contact “transfer” requests to approve transfers responded during the reporting period</u>
<u>35</u>	<u>srs-cont-transfer-cancel</u>	<u>number of SRS (EPP and any other interface) contact “transfer” requests to cancel transfers responded during the reporting period</u>
<u>36</u>	<u>srs-cont-transfer-query</u>	<u>number of SRS (EPP and any other interface) contact “transfer” requests to query about a transfer responded during the reporting period</u>
<u>37</u>	<u>srs-cont-transfer-reject</u>	<u>number of SRS (EPP and any other interface) contact “transfer” requests to reject transfers responded during the reporting period</u>
<u>38</u>	<u>srs-cont-transfer-request</u>	<u>number of SRS (EPP and any other interface) contact “transfer” requests to request transfers responded during the reporting period</u>
<u>39</u>	<u>srs-cont-update</u>	<u>number of SRS (EPP and any other interface) contact “update” requests responded during the reporting period</u>

The first line shall include the field names exactly as described in the table above as a “header line” as described in section 2 of RFC 4180. The last line of each report shall include totals for each column across all registrars; the first field of this line shall read “Totals” while the second field shall be left empty in that line. No other lines besides the ones described above shall be included. Line breaks shall be <U+000D, U+000A> as described in RFC 4180.

## SPECIFICATION 4

### SPECIFICATION FOR REGISTRATION DATA ~~PUBLICATION~~DIRECTORY SERVICES

1. ~~WHOIS Service~~Registration Data Directory Services. Until ICANN ~~specifies~~requires a different ~~format and~~ protocol, Registry Operator will operate a ~~registration data publication~~WHOIS service available via ~~both~~ port 43 in accordance with RFC 3912, and a ~~website~~web-based Directory Service at <whois.nic.TLD> in accordance with RFC 3912 providing free public query-based access to at least the following elements in the following format. ICANN reserves the right to specify alternative formats and protocols, and upon such specification, the Registry Operator will implement such alternative specification as soon as reasonably practicable.

1.1. The format of responses shall follow a semi-free text format outline below, followed by a blank line and a legal disclaimer specifying the rights of Registry Operator, and of the user querying the database.

1.2. Each data object shall be represented as a set of key/value pairs, with lines beginning with keys, followed by a colon and a space as delimiters, followed by the value.

1.3. For fields where more than one value exists, multiple key/value pairs with the same key shall be allowed (for example to list multiple name servers). The first key/value pair after a blank line should be considered the start of a new record, and should be considered as identifying that record, and is used to group data, such as hostnames and IP addresses, or a domain name and registrant information, together.

#### 1.4. Domain Name Data:

1.4.1. **Query format:** whois EXAMPLE.TLD

1.4.2. **Response format:**

Domain Name: EXAMPLE.TLD  
Domain ID: D1234567-TLD  
WHOIS Server: whois.example.tld  
Referral URL: http://www.example.tld  
Updated Date: 2009-05-29T20:13:00Z  
Creation Date: 2000-10-08T00:45:00Z  
Expiration Date: 2010-10-08T00:44:59Z  
Sponsoring Registrar: EXAMPLE REGISTRAR LLC  
Sponsoring Registrar IANA ID: 5555555  
Domain Status: clientDeleteProhibited  
Domain Status: clientRenewProhibited  
Domain Status: clientTransferProhibited  
Domain Status: serverUpdateProhibited  
Registrant ID: 5372808-ERL  
Registrant Name: EXAMPLE REGISTRANT  
Registrant Organization: EXAMPLE ORGANIZATION  
Registrant Street: 123 EXAMPLE STREET  
Registrant City: ANYTOWN  
Registrant State/Province: AP  
Registrant Postal Code: A1A1A1

Registrant Country: EX  
Registrant Phone: +1.5555551212  
Registrant Phone Ext: 1234  
Registrant Fax: +1.5555551213  
Registrant Fax Ext: 4321  
Registrant Email: EMAIL@EXAMPLE.TLD  
Admin ID: 5372809-ERL  
Admin Name: EXAMPLE REGISTRANT ADMINISTRATIVE  
Admin Organization: EXAMPLE REGISTRANT ORGANIZATION  
Admin Street: 123 EXAMPLE STREET  
Admin City: ANYTOWN  
Admin State/Province: AP  
Admin Postal Code: A1A1A1  
Admin Country: EX  
Admin Phone: +1.5555551212  
Admin Phone Ext: 1234  
Admin Fax: +1.5555551213  
Admin Fax Ext:  
Admin Email: EMAIL@EXAMPLE.TLD  
Tech ID: 5372811-ERL  
Tech Name: EXAMPLE REGISTRAR TECHNICAL  
Tech Organization: EXAMPLE REGISTRAR LLC  
Tech Street: 123 EXAMPLE STREET  
Tech City: ANYTOWN  
Tech State/Province: AP  
Tech Postal Code: A1A1A1  
Tech Country: EX  
Tech Phone: +1.1235551234  
Tech Phone Ext: 1234  
Tech Fax: +1.5555551213  
Tech Fax Ext: 93  
Tech Email: EMAIL@EXAMPLE.TLD  
Name Server: NS01.EXAMPLEREGISTRAR.TLD  
Name Server: NS02.EXAMPLEREGISTRAR.TLD  
DNSSEC: signedDelegation  
DNSSEC: unsigned  
>>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

### 1.5. Registrar Data:

1.5.1. **Query format:** whois "registrar Example Registrar, Inc."

1.5.2. **Response format:**

Registrar Name: Example Registrar, Inc.  
Street: 1234 Admiralty Way  
City: Marina del Rey  
State/Province: CA  
Postal Code: 90292  
Country: US  
Phone Number: +1.3105551212

Fax Number: +1.3105551213  
 Email: registrar@example.tld  
 WHOIS Server: whois.example-registrar.tld  
 Referral URL: http://www.example-registrar.tld  
 Admin Contact: Joe Registrar  
 Phone Number: +1.3105551213  
 Fax Number: +1.3105551213  
 Email: joeregistrar@example-registrar.tld  
 Admin Contact: Jane Registrar  
 Phone Number: +1.3105551214  
 Fax Number: +1.3105551213  
 Email: janeregistrar@example-registrar.tld  
 Technical Contact: John Geek  
 Phone Number: +1.3105551215  
 Fax Number: +1.3105551216  
 Email: johngeek@example-registrar.tld  
 >>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

## 1.6. Nameserver Data:

1.6.1. **Query format:** whois "NS1.EXAMPLE.TLD" or whois "nameserver (IP Address)"

1.6.2. **Response format:**

Server Name: NS1.EXAMPLE.TLD  
 IP Address: 192.0.2.123  
 IP Address: 2001:0DB8::1  
 Registrar: Example Registrar, Inc.  
 WHOIS Server: whois.example-registrar.tld  
 Referral URL: http://www.example-registrar.tld  
 >>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

1.7. The format of the following data fields: domain status, individual and organizational names, address, street, city, state/province, postal code, country, telephone and fax numbers, email addresses, date and times should conform to the mappings specified in EPP RFCs 5730-5734 so that the display of this information (or values return in WHOIS responses) can be uniformly processed and understood.

~~[Drafting note to community on change from v4 to v5: The ICANN board of directors has referred the potential requirement to provide searchable Whois (Section 1.8 of Specification 4 in the previous version of the draft Registry Agreement) to its working group on data/consumer protection, which has not completed its review. — For the purposes of this draft Specification 4, the requirement has been removed but it may be modified and reintroduced upon direction from the working group, and the ICANN board of directors.]~~

[1.8. Searchability.](#) Offering searchability capabilities on the Directory Services is optional but if offered by the Registry Operator it shall comply with the specification described in this section.

[1.8.1. Registry Operator will offer searchability on the web-based Directory Service.](#)

1.8.2. Registry Operator will offer partial match capabilities, at least, on the following fields: domain name, contacts and registrant's name, and contact and registrant's postal address, including all the sub-fields described in EPP (e.g., street, city, state or province, etc.).

1.8.3. Registry Operator will offer exact-match capabilities, at least, on the following fields: registrar id, name server name, and name server's IP address (only applies to IP addresses stored by the registry, i.e., glue records).

1.8.4. Registry Operator will offer Boolean search capabilities supporting, at least, the following logical operators to join a set of search criteria: AND, OR, NOT.

1.8.5. Search results will include domain names matching the search criteria.

1.8.6. Registry Operator will: 1) implement appropriate measures to avoid abuse of this feature (e.g., permitting access only to legitimate authorized users); and 2) ensure the feature is in compliance with any applicable privacy laws or policies.

## 2. Zone File Access

### 2.1. Third-Party Access

2.1.1. **Zone File Access Agreement.** Registry Operator will enter into an agreement with any Internet user that will allow such user to access an Internet host server or servers designated by Registry Operator and download zone file data. The agreement will be standardized, facilitated and administered by a Centralized Zone FileData Access Service Provider (the "ZFA/CZDA Provider")-~~pursuant to the Zone File Access Implementation Plan (the "ZFA Plan") dated [ ] available at <LINK>.~~ Registry Operator will ~~cooperate with the ZFA Provider in establishing uniform~~ provide access to zone file data per Section 2.1.3 and do so using the file format described in Section 2.1.4. Notwithstanding the foregoing, (a) ~~Registry Operator may reject the request for access of any user that Registry Operator reasonably believes will violate the terms of Section 2.1.5 below, and (b) the ZFA/the CZDA Provider may reject the request for access of any user that does not pass all~~ satisfy the credentialing requirements ~~established pursuant to the ZFA Plan in Section 2.1.2 below;~~ (b) Registry Operator may reject the request for access of any user that does not provide correct or legitimate credentials under Section 2.1.2 or where Registry Operator reasonably believes will violate the terms of Section 2.1.5. below; and, (c) Registry Operator may revoke access of any user if Registry Operator has evidence to support that the user has violated the terms of Section 2.1.5.

2.1.2. **User Information Credentialing Requirements.** Registry Operator, through the facilitation of the ZFA/CZDA Provider, will request each user to provide it with information sufficient to correctly identify and locate the user ~~and its designated server~~. Such user information will include, without limitation, company name, contact name, address, telephone number, facsimile number, and email address ~~and the Internet host machine name and IP address~~.

2.1.3. **Grant of Access.** Each Registry Operator will provide the Zone File FTP (or other Registry supported) service for an ICANN-specified and managed URL (specifically, <TLD>.zda.icann.org where <TLD> is the TLD for which the registry is responsible) for the user to access the Registry's zone data archives. Registry Operator will grant the ~~User~~ user a ~~nonexclusive~~ non-exclusive, non-transferable, limited right to access Registry Operator's Server Zone File FTP server, and to transfer a copy of the top-level domain zone files, and any associated cryptographic

checksum files ~~to its Server~~ no more than once per 24 hour period using FTP, ~~HTTP~~, or other data transport and access protocols that may be prescribed by ICANN. For every zone file access server, the zone files are in the top-level directory called <zone>.zone.gz, with <zone>.zone.gz.md5 and <zone>.zone.gz.sig to verify downloads. If the Registry Operator also provides historical data, it will use the naming pattern <zone>-yyyymmdd.zone.gz, etc.

2.1.4. **File Format ~~Standards~~Standard**. Registry Operator will provide zone files ~~in~~ using a sub-format of the standard Master File format as originally defined in RFC 1035, Section 5, including all the records present in the actual zone used in the public DNS ~~using one of the sub-formats defined in the ZFA Plan.~~ Sub-format is as follows:

1. Each record must include all fields in one line as: <domain-name> <TTL> <class> <type> <RDATA>.
2. Class and Type must use the standard mnemonics and must be in upper case.
3. TTL must be present as a decimal integer.
4. Use of /X and /DDD inside domain names is allowed.
5. All domain names must be in upper case.
6. Must use exactly one tab as separator of fields inside a record.
7. All domain names must be fully qualified.
8. No \$ORIGIN directives.
9. No use of "@" to denote current origin.
10. No use of "blank domain names" at the beginning of a record to continue the use of the domain name in the previous record.
11. No \$INCLUDE directives.
12. No \$TTL directives.
13. No use of parentheses, e.g., to continue the list of fields in a record across a line boundary.
14. No use of comments.
15. No blank lines.
16. The SOA record should be present at the top and (duplicated at) the end of the zone file.
17. With the exception of the SOA record, all the records in a file must be in alphabetical order.
18. One zone per file. If a TLD divides its DNS data into multiple zones, each goes into a separate file named as above, with all the files combined using tar into a file called <tld>.zone.tar.

2.1.5. **Use of Data by User**. Registry Operator will permit user to use the zone file for lawful purposes; provided that, (a) user takes all reasonable steps to protect against unauthorized access to

and use and disclosure of the data, and (b) under no circumstances will Registry Operator be required or permitted to allow user to use the data to, (i) allow, enable, or otherwise support the transmission by e-mail, telephone, or facsimile of mass unsolicited, commercial advertising or solicitations to entities other than user's own existing customers, or (ii) enable high volume, automated, electronic processes that send queries or data to the systems of Registry Operator or any ICANN-accredited registrar.

2.1.6. **Term of Use.** Registry Operator, through ZFACZDA Provider, will provide each user with access to the zone file for a period of not less than three (3) months. Registry Operator will allow users to renew their Grant of Access.

2.1.7. **No Fee for Access.** Registry Operator will provide, and ZFACZDA Provider will facilitate, access to the zone file to user at no cost.

*[Note: This Section 2.1 has been modified following ~~conclusion~~ICANN's acceptance of the Zone File Access Advisory Group's ~~work and its recommendation to ICANN~~ that a service provider be established to enhance access to zone file information in new TLDs. ~~The implementation of the recommendation is under development and~~ICANN has commenced development of the Centralized Zone Data Access Pilot Program that is subject to community input before inclusion in the final gTLD Registry Agreement it is finalized. Once the Pilot Program is complete and ICANN has identified the CZDA Provider, the implementation notes will be posted to the ICANN website.]*

## 2.2 ~~ICANN Access.~~Co-operation

2.2.1. Assistance. Registry Operator will co-operate and provide reasonable assistance to ICANN and the CZDA Provider to facilitate and maintain the efficient access of zone file data by permitted users as contemplated under this Schedule.

## 3. Bulk Registration Data Access to ICANN

3.1. Periodic Access to Thin Registration Data. In order to verify and ensure the operational stability of Registry Services as well as to facilitate compliance checks on accredited registrars, Registry Operator will provide ICANN on a weekly basis (the day to be designated by ICANN) with up-to-date Registration Data as specified below. Data will include data committed as of 00:00:00 UTC on the day previous to the one designated for retrieval by ICANN.

3.1.1. Contents. Registry Operator will provide the following data for all registered domain names: domain name, registrar id (IANA ID), statuses, last updated date, creation date, expiration date, and name server names. For sponsoring registrars, it will provide: registrar name, hostname of registrar Whois server, and URL of registrar.

3.1.2. Format. The data will be provided in the format specified in Specification 2 for Data Escrow (including encryption, signing, etc.) but including only the fields mentioned in the previous section, i.e., the file will only contain Domain and Registrar objects with the fields mentioned above.

~~2.2.1. General~~3.1.3. Access. Registry Operator ~~shall provide bulk access to the zone files for the registry for the TLD to ICANN or its designee on a continuous basis in the manner ICANN may reasonably specify from time to time.~~will have the file(s) ready for download as of 00:00:00 UTC on the

day designated for retrieval by ICANN. The file(s) will be made available for download by SFTP, though ICANN may request other means in the future.

**3.2. Exceptional Access to Thick Registration Data.** In case of a registrar failure, de-accreditation, court order, etc. that prompts the temporary or definitive transfer of its domain names to another registrar, at the request of ICANN, Registry Operator will provide ICANN with up-to-date data for the domain names of the losing registrar. The data will be provided in the format specified in Specification 2 for Data Escrow. The file will only contain data related to the domain names of the losing registrar. Registry Operator will provide the data within 2 business days. Unless otherwise agreed by Registry Operator and ICANN, the file will be made available for download by ICANN in the same manner as the data specified in Section 3.1. of this Specification.

## SPECIFICATION 5

### SCHEDULE OF RESERVED NAMES AT THE SECOND LEVEL IN GTLD REGISTRIES

Except to the extent that ICANN otherwise expressly authorizes in writing, Registry Operator shall reserve (i.e., Registry Operator shall not register, delegate, use or otherwise make available such labels to any third party, but may register such labels in its own name in order to withhold them from delegation or use) names formed with the following labels from initial (i.e. other than renewal) registration within the TLD:

1. **Example. The label “EXAMPLE”** shall be reserved at the second level and at all other levels within the TLD at which Registry Operator makes registrations.
2. **Two-character labels.** All two-character labels shall be initially reserved. The reservation of a two-character label string shall be released to the extent that Registry Operator reaches agreement with the government and country-code manager. The Registry Operator may also propose release of these reservations based on its implementation of measures to avoid confusion with the corresponding country codes.
3. **Tagged Domain Names.** Labels may only include hyphens in the third and fourth position if they represent valid internationalized domain names in their ASCII encoding (for example "xn--ndk061n").
4. **Second-Level Reservations for Registry Operations.** The following names are reserved for use in connection with the operation of the registry for the TLD. Registry Operator may use them, but upon conclusion of Registry Operator's designation as [operator](#) of the registry for the TLD they shall be transferred as specified by ICANN: NIC, WWW, IRIS and WHOIS.
5. **Country and Territory Names.** The country and territory names contained in the following internationally recognized lists shall be initially reserved at the second level and at all other levels within the TLD at which the Registry Operator provides for registrations:
  - 5.1. the short form (in English) of all country and territory names contained on the ISO 3166-1 list, as updated from time to time;
  - 5.2. the United Nations Group of Experts on Geographical Names, Technical Reference Manual for the Standardization of Geographical Names, Part III Names of Countries of the World; and
  - 5.3. the list of United Nations member states in 6 official United Nations languages prepared by the Working Group on Country Names of the United Nations Conference on the Standardization of Geographical Names.

## SPECIFICATION 6

### REGISTRY INTEROPERABILITY, ~~CONTINUITY~~, AND ~~PERFORMANCE~~ CONTINUITY SPECIFICATIONS

#### 1. Standards Compliance

1.1. DNS. Registry Operator shall ~~implement and~~ comply with relevant existing RFCs and those published in the future by the Internet Engineering Task Force (IETF) including all successor standards, modifications or additions thereto relating to ~~(i)~~ the DNS and name server operations including without limitation RFCs 1034, 1035, 1982, 2181, 2182, 2671, 3226, 3596, 3597, ~~3901, 4343, 4472~~, and 5966.

~~and (ii)~~ 1.2. EPP. Registry Operator shall comply with relevant existing RFCs and those published in the future by the Internet Engineering Task Force (IETF) including all successor standards, modifications or additions thereto relating to the provisioning and management of domain names using the Extensible Provisioning Protocol (EPP) in conformance with RFCs ~~3735~~, 5910, 5730, 5731, 5732, 5733 and 5734. If Registry Operator implements Registry Grace Period (RGP), it will comply with RFC 3915 and its successors. If Registry Operator requires the use of functionality outside the base EPP RFCs, Registry Operator must document EPP extensions in Internet-Draft format following the guidelines described in RFC 3735. Registry Operator will provide and update the relevant documentation of all the EPP Objects and Extensions supported to ICANN prior to deployment.

1.3. DNSSEC. Registry Operator shall sign its TLD zone files implementing Domain Name System Security Extensions (“DNSSEC”). During the Term, Registry Operator shall comply with RFCs 4033, 4034, 4035, 4509 and their successors, and follow the best practices described in RFC 4641 and its successors. If Registry Operator implements Hashed Authenticated Denial of Existence for DNS Security Extensions, it shall comply with RFC 5155 and its successors. Registry Operator shall accept public-key material from child domain names in a secure manner according to industry best practices. Registry shall also publish in its website the DNSSEC Practice Statements (DPS) describing critical security controls and procedures for key material storage, access and usage for its own keys and secure acceptance of registrants’ public-key material. Registry Operator shall publish its DPS following the format described in “DPS-framework” (currently in draft format, see <http://tools.ietf.org/html/draft-ietf-dnsop-dnssec-dps-framework>) within 180 days after the “DPS-framework” becomes an RFC.

1.4. IDN. If the Registry Operator offers Internationalized Domain Names (“IDNs”), it shall comply with RFCs 5890, 5891, 5892, 5893 and their successors. Registry Operator shall comply with the ICANN IDN Guidelines at <<http://www.icann.org/en/topics/idn/implementation-guidelines.htm>>, as they may be amended, modified, or superseded from time to time. Registry Operator shall publish and keep updated its IDN Tables and IDN Registration Rules in the IANA Repository of IDN Practices as specified in the ICANN IDN Guidelines.

1.5. IPv6. Registry Operator shall be able to accept IPv6 addresses as glue records in its Registry System and publish them in the DNS. Registry Operator shall offer public IPv6 transport for, at least, two of the Registry’s name servers listed in the root zone with the corresponding IPv6 addresses registered with IANA. Registry Operator should follow “DNS IPv6 Transport Operational Guidelines” as described in BCP 91 and the recommendations and considerations described in RFC 4472. Registry Operator shall offer public IPv6 transport for its Registration Data Publication Services as defined in Specification 4 of this Agreement; e.g. Whois (RFC 3912), Web based Whois. Registry Operator shall offer public IPv6 transport for its Shared Registration System (SRS) to any Registrar, no later than six months after

receiving the first request in writing from a gTLD accredited Registrar willing to operate the SRS over IPv6.

## 2. Registry Services ~~and Continuity~~

2.1. Registry Services. “Registry Services” are, for purposes of the Registry Agreement, defined as the following: (a) those services that are operations of the registry critical to the following tasks: the receipt of data from registrars concerning registrations of domain names and name servers; provision to registrars of status information relating to the zone servers for the TLD; dissemination of TLD zone files; operation of the registry DNS servers; and dissemination of contact and other information concerning domain name server registrations in the TLD as required by this Agreement; (b) other products or services that the Registry Operator is required to provide because of the establishment of a Consensus Policy as defined in Specification 1; (c) any other products or services that only a registry operator is capable of providing, by reason of its designation as the registry operator; and (d) material changes to any Registry Service within the scope of (a), (b) or (c) above.

2.2. Wildcard Prohibition. For domain names which are either not registered, or the registrant has not supplied valid records such as NS records for listing in the DNS zone file, or their status does not allow them to be published in the DNS, the use of DNS wildcard Resource Records as described in RFCs 1034 and 4592 or any other method or technology for synthesizing DNS Resources Records or using redirection within the DNS by the Registry is prohibited. When queried for such domain names the authoritative name servers must return a “Name Error” response (also known as NXDOMAIN), RCODE 3 as described in RFC 1035 and related RFCs. This provision applies for all DNS zone files at all levels in the DNS tree for which the Registry Operator (or an affiliate engaged in providing Registration Services) maintains data, arranges for such maintenance, or derives revenue from such maintenance.

## 3. Registry Continuity

3.1. High Availability. Registry Operator will conduct its operations using network and geographically diverse, redundant servers (including network-level redundancy, end-node level redundancy and the implementation of a load balancing scheme where applicable) to ensure continued operation in the case of technical failure (widespread or local), ~~business insolvency~~ or an extraordinary occurrence or circumstance beyond the control of the Registry Operator.

3.2. Extraordinary Event. Registry Operator will use commercially reasonable efforts to restore the critical functions of the registry within 24 hours after the termination of an extraordinary event beyond the control of the Registry Operator and restore full system functionality within a maximum of 48 hours following such event, depending on the type of critical function involved. Outages due to such an event will not be considered a lack of service availability.

3.3. Business Continuity. Registry Operator shall maintain a business continuity plan, which will provide for the maintenance of Registry Services in the event of an extraordinary event beyond the control of the Registry Operator or business failure of Registry Operator, and may include the designation of a Registry Services continuity provider. If such plan includes the designation of a Registry Services continuity provider, Registry Operator shall provide the name and contact information for such Registry Services continuity provider to ICANN.

In the case of an extraordinary event beyond the control of the Registry Operator where the Registry Operator cannot be contacted, Registry Operator consents that ICANN may contact the designated Registry Services continuity provider, if one exists.

Registry Operator shall conduct Registry Services ~~continuity~~Continuity testing at least once per year.

~~For domain names which are either not registered, or the registrant has not supplied valid records such as NS records for listing in the DNS zone file, or their status does not allow them to be published in the DNS, the use of DNS wildcard Resource Records as described in RFCs 1034 and 4592 or any other method or technology for synthesizing DNS Resources Records or using redirection within the DNS by the Registry is prohibited. When queried for such domain names the authoritative name servers must return a “Name Error” response (also known as NXDOMAIN), RCODE 3 as described in RFC 1035 and related RFCs. This provision applies for all DNS zone files at all levels in the DNS tree for which the Registry Operator (or an affiliate engaged in providing Registration Services) maintains data, arranges for such maintenance, or derives revenue from such maintenance.~~

3.4. Abuse Contact. Registry Operator shall provide to ICANN and publish on its website its accurate contact details including a valid email and mailing address as well as a primary contact for handling inquires related to malicious conduct in the TLD, and will provide ICANN with prompt notice of any changes to such contact details.

4. ~~3.~~ Supported Initial and Renewal Registration Periods

4.1. Initial Registration Periods. Initial registrations of registered names may be made in the registry in one (1) year increments for up to a maximum of ten (10) years. For the avoidance of doubt, initial registrations of registered names may not exceed ten (10) years.

4.2. Renewal ~~registrations~~Periods. Renewal of registered names may be made in one (1) year increments for up to a maximum of ten (10) years. For the avoidance of doubt, renewal ~~registrations~~ of registered names may not ~~exceed~~extend their registration period beyond ten (10) years from the time of the renewal.

4. ~~Performance Specifications~~

	<b>Parameter</b>	<b>SLR (monthly basis)</b>
<b>DNS</b>	<del>DNS service availability</del>	<del>0 min downtime = 100% availability</del>
	<del>DNS name server availability</del>	<del>≤ 432 min of downtime (≈ 99%)</del>
	<del>TCP DNS resolution RTT</del>	<del>≤ 1500 ms, for at least 95% of the queries</del>
	<del>UDP DNS resolution RTT</del>	<del>≤ 400 ms, for at least 95% of the queries</del>
	<del>DNS update time</del>	<del>≤ 60 min, for at least 95% of the updates</del>
<b>RDPS</b>	<del>RDPS availability</del>	<del>≤ 432 min of downtime (≈ 99%)</del>
	<del>RDPS query RTT</del>	<del>≤ 1500 ms, for at least 95% of the queries</del>
	<del>RDPS update time</del>	<del>≤ 60 min, for at least 95% of the updates</del>
<b>EPP</b>	<del>EPP service availability</del>	<del>≤ 864 min of downtime (≈ 98%)</del>
	<del>EPP session command RTT</del>	<del>≤ 3000 ms, for at least 90% of the commands</del>
	<del>EPP query command RTT</del>	<del>≤ 1500 ms, for at least 90% of the commands</del>
	<del>EPP transform command RTT</del>	<del>≤ 3000 ms, for at least 90% of the commands</del>

~~SLR. Service Level Requirement is the level of service expected for certain parameter being measured in a Server Level Agreement (SLA).~~

**RTT.** Round Trip Time or **RTT** refers to the time measured from the sending of the first bit of the first packet of the sequence of packets needed to make a request until the reception of the last bit of the last packet of the sequence needed to receive the response. If the client does not receive the whole sequence of packets needed to consider the response as received, the time will be considered undefined.

**IP address.** Refers to IPv4 or IPv6 address without making any distinction between the two. When there is need to make a distinction, IPv4 or IPv6 is mentioned.

**DNS.** Refers to the Domain Name System as specified in RFCs 1034, 1035 and related RFCs.

**DNS service availability.** Refers to the ability of the group of listed as authoritative name servers of a particular domain name (e.g. a TLD), to answer DNS queries from an Internet user. For the service to be considered available at some point in time, at least, two of the name servers registered in the DNS must have defined results from “**DNS tests**” to each of their public DNS registered “**IP addresses**” over both (UDP and TCP) transports. If 51% or more of the DNS testing probes see the service as unavailable over any of the transports (UDP or TCP) during a given time, the DNS service will be considered unavailable.

**DNS name server availability.** Refers to the ability of a public DNS registered “**IP address**” of a particular name server listed as authoritative for a domain name, to answer DNS queries from an Internet user. All the public DNS registered “**IP address**” of all name servers of the domain name being monitored shall be tested individually. If 51% or more of the DNS testing probes get undefined results from “**DNS tests**” to a name server “**IP address**” over any of the transports (UDP or TCP) during a given time, the name server “**IP address**” will be considered unavailable.

**UDP DNS resolution RTT.** Refers to the **RTT** of the sequence of two packets, the UDP DNS query and the corresponding UDP DNS response. If the **RTT** is 5 times or more the corresponding SLR, the **RTT** will be considered undefined.

**TCP DNS resolution RTT.** Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the DNS response for only one DNS query. If the **RTT** is 5 times or more the corresponding SLR, the **RTT** will be considered undefined.

**DNS resolution RTT.** Refers to either “**UDP DNS resolution RTT**” or “**TCP DNS resolution RTT**”.

**DNS update time.** Refers to the time measured from the reception of an EPP confirmation to a transform command on a domain name, up until all the name servers of the parent domain name answer “**DNS queries**” with data consistent with the change made. This only applies for changes to DNS information.

**DNS test.** Means one non-recursive DNS query sent to a particular “**IP address**” (via UDP or TCP). If DNSSEC is offered in the queried DNS zone, for a query to be considered answered, the signatures must be positively verified against a corresponding DS record published in the parent zone or, if the parent is not signed, against a statically configured Trust Anchor. The query shall be about existing domain names. The answer to the query must contain the corresponding information from the Registry System, otherwise the query will be considered unanswered. If the answer to a query has the TC bit set, the query will be considered unanswered. A query with a “**DNS resolution RTT**” 5 times higher than the corresponding SLR, will be considered unanswered. The possible results to a DNS test are: a number in milliseconds corresponding to the “**DNS resolution RTT**” or, undefined/unanswered.

**Measuring DNS parameters.** Every minute, every DNS probe shall make an UDP and a TCP “**DNS test**” to each of the public DNS registered “**IP addresses**” of the name servers of the domain named being monitored. If a “**DNS test**” gets unanswered, the tested IP will be considered as unavailable for the

corresponding transport (UDP or TCP) from that probe until it is time to make a new test. The minimum number of active testing probes to consider a measurement valid is 20 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.

**Placement of DNS probes.** Probes for measuring DNS parameters shall be placed as near as possible to the DNS resolvers on the networks with the most users across the different geographic regions; care shall be taken not to deploy probes behind high propagation delay links, such as satellite links.

**RDPS.** Registration Data Publication Services refers to the collective of WHOIS and Web based WHOIS services as defined in “SPECIFICATION 4” of this Agreement.

**RDPS availability.** Refers to the ability of all the RDPS services for the TLD, to respond to queries from an Internet user with appropriate data from the Registry System. For the RDPS to be considered available at some point in time, one IPv4 and one IPv6 address for each of the RDPS services must have defined results from “RDPS tests”. If 51% or more of the RDPS testing probes see any of the RDPS services as unavailable during a given time, the RDPS will be considered unavailable.

**WHOIS query RTT.** Refers to the RTT of the sequence of packets from the start of the TCP connection to its end, including the reception of the WHOIS response. If the RTT is 5 times or more the corresponding SLR, the RTT will be considered undefined.

**Web-based WHOIS query RTT.** Refers to the RTT of the sequence of packets from the start of the TCP connection to its end, including the reception of the HTTP response for only one HTTP request. If Registry Operator implements a multiple step process to get to the information, only the last step shall be measured. If the RTT is 5 times or more the corresponding SLR, the RTT will be considered undefined.

**RDPS query RTT.** Refers to the collective of “WHOIS query RTT” and “Web-based WHOIS query RTT”.

**RDPS update time.** Refers to the time measured from the reception of an EPP confirmation to a transform command on a domain name, up until all the “IP addresses” of all the servers of all the RDPS services reflect the changes made.

**RDPS test.** Means one query sent to a particular “IP address” for one of the servers of one of the RDPS services. Queries shall be about existing objects in the Registry System and the responses must contain the corresponding information otherwise the query will be considered unanswered. Queries with an RTT 5 times higher than the corresponding SLR will be considered as unanswered. The possible results to an RDPS test are: a number in milliseconds corresponding to the RTT or undefined/unanswered.

**Measuring RDPS parameters.** Every minute, every RDPS probe shall randomly select one IPv4 and one IPv6 addresses from all the public DNS registered “IP addresses” of the servers for each RDPS service of the TLD being monitored and make an “RDPS test” to each one. If an “RDPS test” gets unanswered, the corresponding RDPS service over IPv4 or IPv6, as the case may be, will be considered as unavailable from that probe until it is time to make a new test. The minimum number of active testing probes to consider a measurement valid is 10 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.

**Placement of RDPS probes.** Probes for measuring RDPS parameters shall be placed inside the networks with the most users across the different geographic regions; care shall be taken not to deploy probes behind high propagation delay links, such as satellite links.

**EPP.** Refers to the Extensible Provisioning Protocol as specified in RFC 5730 and related RFCs.

**EPP service availability.** Refers to the ability of the TLD EPP servers as a group, to respond to commands from the Registry accredited Registrars, who already have credentials to the servers. The response shall include appropriate data from the Registry System. An EPP command with “**EPP command RTT**” 5 times higher than the corresponding SLR will be considered as unanswered. For the EPP service to be considered available at during a measurement period, at least, one IPv4 and one IPv6 (if EPP is offered over IPv6) address of the set of EPP servers must have defined results from “**EPP tests**”. If 51% or more of the EPP testing probes see the EPP service as unavailable during a given time, the EPP service will be considered unavailable.

**EPP session command RTT.** Refers to the **RTT** of the sequence of packets that includes the sending of a session command plus the reception of the EPP response for only one EPP session command. For the login command it will include packets needed for starting the TCP session. For the logout command it will include packets needed for closing the TCP session. EPP session commands are those described in section 2.9.1 of EPP RFC 5730. If the **RTT** is 5 times or more the corresponding SLR, the **RTT** will be considered undefined.

**EPP query command RTT.** Refers to the **RTT** of the sequence of packets that includes the sending of a query command plus the reception of the EPP response for only one EPP query command. It does not include packets needed for the start nor close of neither the EPP nor the TCP session. EPP query commands are those described in section 2.9.2 of EPP RFC 5730. If the **RTT** is 5 times or more the corresponding SLR, the **RTT** will be considered undefined.

**EPP transform command RTT.** Refers to the **RTT** of the sequence of packets that includes the sending of a transform command plus the reception of the EPP response for only one EPP transform command. It does not include packets needed for the start nor close of neither the EPP nor the TCP session. EPP transform commands are those described in section 2.9.3 of EPP RFC 5730. If the **RTT** is 5 times or more the corresponding SLR, the **RTT** will be considered undefined.

**EPP command RTT.** Refers to “**EPP session command RTT**”, “**EPP query command RTT**” or “**EPP transform command RTT**”.

**EPP test.** Means one EPP command sent to a particular “**IP address**” for one of the EPP servers. Query and transform commands, with the exception of “create”, shall be about existing objects in the Registry System. The response shall include appropriate data from the Registry System. The possible results to an EPP test are: a number in milliseconds corresponding to the “**EPP command RTT**” or undefined/unanswered.

**Measuring EPP parameters.** Every 5 minutes, every EPP probe shall randomly select one “**IP address**” of the EPP servers of the TLD being monitored and make an “**EPP tests**”; every time it should randomly alternate between the 3 different types of commands and between the commands inside each type for testing. If an “**EPP test**” gets unanswered, the EPP service will be considered as unavailable from that probe until it is time to make a new test. The minimum number of active testing probes to consider a measurement valid is 10 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.

**Placement of EPP probes.** Probes for measuring EPP parameters shall be placed inside or close to Registrars points of access to the Internet across the different geographic regions; care shall be taken not to deploy probes behind high propagation delay links, such as satellite links.

**Listing of probes.** The current list of probes for DNS, RDPS and EPP can be consulted in ~~< [REDACTED] >~~. Registry Operator is responsible to take the necessary steps to ensure that the listed probes do not get their tests blocked by its network equipment. The list can be updated from time to time by ICANN provided it gives, at least, a 90-day notice to the Registry Operator before making the change. During that period the Registry Operator will have access to the readings for new probes and ICANN will not consider those measurements for SLA purposes.

**Maintenance windows.** Registry Operators is encouraged to do its maintenance windows for the different services at the times and dates of statistically lower traffic for each service. However, note that there is no provision for planned outages or similar; any downtime, be it for maintenance or due to system failures will be noted simply as downtime and counted for SLA purposes.

## 5. Emergency Thresholds

Critical Function	Emergency Thresholds	
DNS service (all servers)	4-hour continuous downtime	4-hour downtime / week
DNSSEC proper resolution	4-hour continuous downtime	4-hour downtime / week
SRS (EPP)	5-day continuous downtime	5-day downtime / month
WHOIS/Web-based- WHOIS	7-day continuous downtime	7-day downtime / month
Data Escrow	Breach of the Registry Agreement caused by missing escrow deposits as described in Specification 2, Part B, Section 6.	

## SPECIFICATION 7

### MINIMUM REQUIREMENTS FOR RIGHTS PROTECTION MECHANISMS

1. **Rights Protection Mechanisms.** Registry Operator shall implement and adhere to any rights protection mechanisms (“RPMs”) that may be mandated from time to time by ICANN. In addition to such RPMs, Registry Operator may develop and implement additional RPMs that discourage or prevent registration of domain names that violate or abuse another party’s legal rights. Registry Operator will include all ICANN mandated and independently developed RPMs in the registry-registrar agreement entered into by ICANN-accredited registrars authorized to register names in the TLD. Registry Operator shall implement ~~at least one of the following RPMs~~ in accordance with requirements established by ICANN ~~for each of the mandatory RPMs set forth in~~ the Trademark Clearinghouse (~~posted at [url to be inserted when final Trademark Clearinghouse is adopted]~~), which may be revised ~~by ICANN~~ from time to time):

- ~~a. A pre-launch claims service provided in association with the Trademark Clearinghouse established by ICANN with respect to registrations in the TLD pursuant to which notices concerning the registration of domain names will be sent to both: (a) potential registrants of domain names that identically match trademarks contained within the Trademark Clearinghouse; and (b) owners of trademarks contained within the Trademark Clearinghouse; or~~
- ~~b. A sunrise registration procedure pursuant to which, during an exclusive period of time prior to the general registration of domain names in the TLD, the owners of trademarks and service marks that have registered with the Trademark Clearinghouse shall have an opportunity to register domain names in the TLD.~~

2. Registry Operator shall not mandate that any owner of applicable intellectual property rights use any other trademark information aggregation, notification, or validation service in addition to or instead of the ICANN-designated Trademark Clearinghouse.

3. ~~2.~~ **Dispute Resolution Mechanisms.** Registry Operator will comply with the following dispute resolution mechanisms as they may be revised from time to time:

- a. the Trademark Post-Delegation Dispute Resolution Procedure (PDDRP) and the Registration Restriction Dispute Resolution Procedure (RRDRP) adopted by ICANN (posted at [urls to be inserted when final procedure is adopted]):
  - ~~i. Registry Operator agrees to reimburse the PDDRP complainant for any fees that the complainant had to pay to the provider in cases where the panel deems the complainant to be the prevailing party.—~~
  - ~~ii. Also, Registry Operator agrees to~~ implement and adhere to any remedies ICANN imposes (which may include any reasonable remedy, including for the avoidance of doubt, the termination of the Registry Agreement pursuant to Section 4.3(e) of the Registry Agreement) following a

determination by any PDDRP or RRDRP panel: and to be bound by any such determination; and

- b. the Uniform Rapid Suspension system (“URS”) adopted by ICANN, (posted at [url to be inserted]), including the implementation of determinations issued by URS examiners.

## SPECIFICATION 8

### CONTINUED OPERATIONS INSTRUMENT

1. The Continued Operations Instrument shall (a) provide for sufficient financial resources to ensure the continued operation of the basic registry functions related to the TLD set forth in Section [\_\_\_] of the Applicant Guidebook posted at [url to be inserted upon finalization of Applicant Guidebook] (which is hereby incorporated by reference into this Specification 8) for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period of one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6) anniversary of the Effective Date, and (b) ~~shall~~ be in the form of either (i) an irrevocable standby letter of credit, or (ii) an irrevocable cash escrow deposit, each meeting the requirements set forth in Section [\_\_\_] of the Applicant Guidebook posted at [url to be inserted upon finalization of Applicant Guidebook] (which is hereby incorporated by reference into this Specification 8). Registry Operator shall use its best efforts to take all actions necessary or advisable to maintain in effect the Continued Operations Instrument for a period of six (6) years from the Effective Date, and to maintain ICANN as a third party beneficiary thereof. Registry Operator shall provide to ICANN copies of all final documents relating to the Continued Operations Instrument and shall keep ICANN reasonably informed of material developments relating to the Continued Operations Instrument. Registry Operator shall not agree to, or permit, any amendment of, or waiver under, the Continued Operations Instrument or other documentation relating thereto without the prior written consent of ICANN (such consent not to be unreasonably withheld). The Continued Operations Instrument shall expressly state that ICANN may access the financial resources of the Continued Operations Instrument pursuant to Section 2.13 or Section 4.5 [*insert for government entity*: or Section 7.14] of the Registry Agreement.
2. If, notwithstanding the use of best efforts by Registry Operator to satisfy its obligations under the preceding paragraph, the Continued Operations Instrument expires or is terminated by another party thereto, in whole or in part, for any reason, prior to the sixth anniversary of the Effective Date, Registry Operator shall promptly (i) notify ICANN of such expiration or termination and the reasons therefor and (ii) arrange for an alternative instrument that provides for sufficient financial resources to ensure the continued operation of the Registry Services related to the TLD for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period of one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6) anniversary of the Effective Date (an “Alternative Instrument”). Any such Alternative Instrument shall be on terms no less favorable to ICANN than the Continued Operations Instrument and shall otherwise be in form and substance reasonably acceptable to ICANN.
3. Notwithstanding anything to the contrary contained in this Specification 8, at any time, Registry Operator may replace the Continued Operations Instrument with an alternative

instrument that (i) provides for sufficient financial resources to ensure the continued operation of the Registry Services related to the TLD for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6) anniversary of the Effective Date, and (ii) contains terms no less favorable to ICANN than the Continued Operations Instrument and is otherwise in form and substance reasonably acceptable to ICANN. In the event Registry Operation replaces the Continued Operations Instrument either pursuant to paragraph 2 or this paragraph 3, the terms of this Specification 8 shall no longer apply with respect to the [original](#) Continuing Operations Instrument, but shall thereafter apply with respect to such replacement instrument(s).

## SPECIFICATION 9\*

### Registry Operator Code of Conduct

*[\*Note: This draft Registry Operator Code of Conduct has been ~~added to the form New gTLD Agreement pursuant to the ICANN Board resolution of 5 November 2010 regarding the question of cross-ownership of gTLD registries and ICANN-accredited registrars. ICANN encourages~~ revised in response to comments received from the community to the draft Specification 9 set forth in the Proposed Final Applicant Guidebook. ICANN continues to encourage community input on the types of conduct that should be prohibited and/or mandated given the potential for cross-ownership of domain-name distribution channels.]*

1. ~~1.-~~ In connection with the operation of the registry for the TLD, Registry Operator will not, and will not allow any parent, subsidiary, Affiliate, subcontractor or other related entity, to the extent such party is engaged in the provision of Registry Services with respect to the TLD (each, a “Registry Related Party”)<sub>1</sub> to:
  - ~~a.~~ a.- directly or indirectly show any preference or provide any special consideration to any registrar; or reseller with respect to the TLD, unless comparable opportunities to qualify for such preferences or considerations are made available to all registrars and resellers on substantially similar terms and subject to substantially similar conditions;
  - ~~b.~~ b.- register domain names in its own right, except for names registered through an ICANN accredited registrar that are reasonably necessary for the management, operations and purpose of the TLD;
  - ~~c.-~~ have access to user data or proprietary information of a registrar utilized by or Affiliated with Registry Operator, except as necessary for management and operations of the TLD; or
  - ~~d.~~ d.- register names in the TLD or sub-domains of the TLD based upon a search of available names by any consumer (i.e. proprietary access to information about searches or resolution requests by consumers for domain names not yet registered (commonly known as, "front-running"))<sub>2</sub>;
  - ~~e.~~ allow any Affiliated registrar to disclose user data to Registry Operator or any Registry Related Party, except as necessary for the management and operations of the TLD, unless all unrelated third parties (including other registry operators) are given equivalent access to such user data on substantially similar terms and subject to substantially similar conditions; or
  - ~~f.~~ disclose confidential registry data or confidential information about its Registry Services or operations to any employee of any DNS services provider, except as necessary for the management and operations of the TLD, unless all unrelated third parties (including other registry operators) are given equivalent access to such

- confidential registry data or confidential information on substantially similar terms and subject to substantially similar conditions.
2. ~~2.~~ If Registry Operator or a Registry Related Party also operates as a provider of registrar or registrar-reseller services, Registry Operator will, or will cause such Registry Related Party to, maintain separate books of accounts with respect to its registrar or registrar-reseller operations.
- ~~3.~~ ~~Registry Operator will, and will cause each Registry Related Party to, ensure that no user data or proprietary information from any registrar is disclosed to Registry Operator or any Registry Related Party, except as necessary for the management and operations of the TLD.~~
- ~~4.~~ ~~Registry Operator will not disclose confidential registry data or confidential information about its registry services or operations to any employee of any DNS services provider, except as necessary for the management and operations of the TLD.~~
3. ~~5.~~ Registry Operator will conduct internal reviews at least once per calendar year to ensure compliance with this Code of Conduct. Within twenty (20) calendar days following the end of each calendar year, Registry Operator will provide the results of the internal review, along with a certification executed by an executive officer of Registry Operator certifying as to Registry Operator's compliance with this Code of Conduct, via email to ~~an~~ address to be provided by ICANN. (ICANN may specify in the future that the reports be delivered by other reasonable means.) Registry Operator agrees that ICANN may publicly post such results and certification.
4. ~~6.~~ Nothing set forth herein shall: (i) limit ICANN from conducting investigations of claims of Registry Operator's non-compliance with this Code of Conduct; or (ii) provide grounds for Registry Operator to refuse to cooperate with ICANN investigations of claims of Registry Operator's non-compliance with this Code of Conduct.
5. Nothing set forth herein shall limit the ability of Registry Operator or any Registry Related Party, to enter into arms-length transactions in the ordinary course of business with a registrar or reseller with respect to products and services unrelated in all respects to the TLD.
6. Notwithstanding anything set forth in the foregoing, this Code of Conduct shall not apply to Registry Operator if (i) Registry Operator maintains all registrations in the TLD for its own use and (ii) Registry Operator does not sell, distribute or otherwise make available to any unaffiliated third party any registrations in the TLD. [\*Note: This draft Section 6 of the Registry Operator Code of Conduct has been added in response to comments received that suggested that the Code was not necessary for registries in which a single registrant uses the TLD solely for its own operations and does not sell registrations to third parties (e.g. a dot-BRAND)]

## SPECIFICATION 10

### REGISTRY PERFORMANCE SPECIFICATIONS

(Note: This Specification 10 is new, but the text originated in Specification 6. This redline shows the changes to these provisions since the last draft of Specification 6 was posted.)

#### 1. Definitions

1.1. **DNS.** Refers to the Domain Name System as specified in RFCs 1034, 1035, and related RFCs.

1.2. **DNSSEC proper resolution.** There is a valid DNSSEC chain of trust from the root trust anchor to a particular domain name, e.g., a TLD, a domain name registered under a TLD, etc.

~~1.2.1.3.~~ **EPP.** Refers to the Extensible Provisioning Protocol as specified in RFC 5730 and related RFCs.

~~1.3.1.4.~~ **IP address.** Refers to IPv4 or IPv6 addresses without making any distinction between the two. When there is need to make a distinction, IPv4 or IPv6 is ~~mentioned~~used.

1.5. **Probes.** Network hosts used to perform (DNS, EPP, etc.) tests (see below) that are located at various global locations.

~~1.4.1.6.~~ **RDPSRDDDS.** Registration Data ~~Publication-Directory~~ Services refers to the collective of WHOIS and Web-based WHOIS services as defined in Specification 4 of this Agreement.

~~1.5.1.7.~~ **RTT.** Round-Trip Time or **RTT** refers to the time measured from the sending of the first bit of the first packet of the sequence of packets needed to make a request until the reception of the last bit of the last packet of the sequence needed to receive the response. If the client does not receive the whole sequence of packets needed to consider the response as received, the ~~time~~ request will be considered ~~undefined~~unanswered.

~~1.6.1.8.~~ **SLR.** Service Level Requirement is the level of service expected for a certain parameter being measured in a ~~Server-Service~~ Level Agreement (SLA).

#### 2. Service Level Agreement Matrix

	Parameter	SLR (monthly basis)
<b>DNS</b>	DNS service availability	0 min downtime = 100% availability
	DNS name server availability	≤ 432 min of downtime (≈ 99%)
	TCP DNS resolution RTT	≤ <del>10</del> 500 ms, for at least 95% of the queries
	UDP DNS resolution RTT	≤ 400 ms, for at least 95% of the queries
	DNS update time	≤ 60 min, for at least 95% of the <u>updates</u> <del>probes</del>
<b>RDPSRDDDS</b>	<del>RDPS-RDDDS</del> availability	≤ <del>432</del> - <del>864</del> min of downtime (≈ <del>9998</del> %)
	<del>RDPS-RDDDS</del> query RTT	≤ <del>1500</del> - <del>2000</del> ms, for at least 95% of the queries
	<del>RDPS-RDDDS</del> update time	≤ 60 min, for at least 95% of the <u>updates</u> <del>probes</del>
<b>EPP</b>	EPP service availability	≤ 864 min of downtime (≈ 98%)

EPP session-command RTT	≤ <del>3000-4000</del> ms, for at least 90% of the commands
EPP query-command RTT	≤ <del>1500-2000</del> ms, for at least 90% of the commands
EPP transform-command RTT	≤ <del>3000-4000</del> ms, for at least 90% of the commands

~~**Listing of probes.** The current list of probes for DNS, RDPS and EPP can be consulted in . Registry Operator is responsible to take the necessary steps to ensure that the listed probes do not get their tests blocked by its network equipment. The list can be updated from time to time by ICANN provided it gives, at least, a 90-day notice to the Registry Operator before making the change. During that period the Registry Operator will have access to the readings for new probes and ICANN will not consider those measurements for SLA purposes.~~

~~**Maintenance windows.** Registry Operator is encouraged to do its maintenance windows for the different services at the times and dates of statistically lower traffic for each service. However, note that there is no provision for planned outages or similar; any downtime, be it for maintenance or due to system failures, will be noted simply as downtime and counted for SLA purposes.~~

### 2.1.3. DNS

3.1. DNS service availability. Refers to the ability of the group of listed-as-authoritative name servers of a particular domain name (e.g., a TLD), to answer DNS queries from ~~an Internet user~~ DNS probes. For the service to be considered available at ~~some point in time~~ a particular moment, at least, two of the delegated name servers registered in the DNS must have defined successful results from “DNS tests” to each of their public-DNS registered “IP addresses” ~~to which the name server resolves over both (UDP and TCP) transports~~. If 51% or more of the DNS testing probes see the service as unavailable ~~over any of the transports (UDP or TCP)~~ during a given time, the DNS service will be considered unavailable.

3.2. DNS name server availability. Refers to the ability of a public-DNS registered “IP address” of a particular name server listed as authoritative for a domain name, to answer DNS queries from an Internet user. All the public DNS-registered “IP address” of all name servers of the domain name being monitored shall be tested individually. If 51% or more of the DNS testing probes get undefined/unanswered results from “DNS tests” to a name server “IP address” ~~over any of the transports (UDP or TCP)~~ during a given time, the name server “IP address” will be considered unavailable.

3.3. UDP DNS resolution RTT. Refers to the RTT of the sequence of two packets, the UDP DNS query and the corresponding UDP DNS response. If the RTT is 5\_-times ~~or more greater than the time specified in the relevant~~ the corresponding SLR, the RTT will be considered undefined.

3.4. TCP DNS resolution RTT. Refers to the RTT of the sequence of packets from the start of the TCP connection to its end, including the reception of the DNS response for only one DNS query. If the RTT is 5\_-times greater than the time specified in the relevant ~~or more the corresponding~~ SLR, the RTT will be considered undefined.

3.5. DNS resolution RTT. Refers to either “UDP DNS resolution RTT” or “TCP DNS resolution RTT”.

**3.6. DNS update time.** Refers to the time measured from the reception of an EPP confirmation to a transform command on a domain name, ~~up-~~until ~~all-~~the name servers of the parent domain name answer “DNS queries” with data consistent with the change made. This only applies for changes to DNS information.

**3.7. DNS test.** Means one non-recursive DNS query sent to a particular “IP address” (via UDP or TCP). If DNSSEC is offered in the queried DNS zone, for a query to be considered answered, the signatures must be positively verified against a corresponding DS record published in the parent zone or, if the parent is not signed, against a statically configured Trust Anchor. ~~The query shall be about existing domain names.~~ The answer to the query must contain the corresponding information from the Registry System, otherwise the query will be considered unanswered. ~~If the answer to a query has the TC bit set, the query will be considered unanswered.~~ A query with a “DNS resolution RTT” 5-times higher than the corresponding SLR, will be considered unanswered. The possible results to a DNS test are: a number in milliseconds corresponding to the “DNS resolution RTT” or, undefined/unanswered.

**3.8. Measuring DNS parameters.** Every minute, every DNS probe ~~shall will~~ make an UDP ~~and-or~~ TCP “DNS test” to each of the public-DNS registered “IP addresses~~”~~ of the name servers of the domain named ~~d~~ being monitored. If a “DNS test” ~~gets result iss undefined/~~unanswered, the tested IP will be considered ~~as-unavailable for the corresponding transport (UDP or TCP)~~ from that probe until it is time to make a new test.

**3.9. Collating the results from DNS probes.** The minimum number of active testing probes to consider a measurement valid is 20 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.

**3.10. Distribution of UDP and TCP queries.** DNS probes will send UDP or TCP “DNS test” approximating the distribution of these queries.

**3.11. Placement of DNS probes.** Probes for measuring DNS parameters shall be placed as near as possible to the DNS resolvers on the networks with the most users across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

#### **4. RDDS**

**4.1. RDPS-RDDS availability.** Refers to the ability of all the RDPS-RDDS services for the TLD, to respond to queries from an Internet user with appropriate data from the relevant Registry System. ~~For the RDPS to be considered available at some point in time, one IPv4 and one IPv6 address for each of the RDPS services must have defined results from “RDPS tests”.~~ If 51% or more of the RDPS-RDDS testing probes see any of the RDPS-RDDS services as unavailable during a given time, the RDPS-RDDS will be considered unavailable.

**4.2. WHOIS query RTT.** Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the WHOIS response. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.

**4.3. Web-based-WHOIS query RTT.** Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the HTTP response for only one HTTP request. If Registry Operator implements a multiple-step process to get to the information, only

the last step shall be measured. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.

**4.4. RDPS-RDDS query RTT.** Refers to the collective of “WHOIS query RTT” and “Web-based-WHOIS query RTT”.

**4.5. RDPS-RDDS update time.** Refers to the time measured from the reception of an EPP confirmation to a transform command on a domain name, host or contact, up until ~~all the “IP addresses”~~ of all the servers of all the **RDPS-RDDS** services reflect the changes made.

**4.6. RDPS-RDDS test.** Means one query sent to a particular “IP address” ~~for of~~ one of the servers of one of the **RDPS-RDDS** services. Queries shall be about existing objects in the Registry System and the responses must contain the corresponding information otherwise the query will be considered unanswered. Queries with an **RTT** 5-times higher than the corresponding SLR will be considered as unanswered. The possible results to an **RDPS-RDDS** test are: a number in milliseconds corresponding to the **RTT** or undefined/unanswered.

**4.7. Measuring RDPS-RDDS parameters.** Every 5 minutes, ~~every RDPS-RDDS probes shall randomly will~~ select one ~~IPv4 and one IPv6~~ IP addresses from all the public-DNS registered “IP addresses” of the servers for each **RDPS-RDDS** service of the TLD being monitored and make an “**RDPS-RDDS test**” to each one. If an “**RDPS-RDDS test**” ~~result is undefined/gets~~ unanswered, the corresponding **RDPS-RDDS** service ~~over IPv4 or IPv6, as the case may be,~~ will be considered as unavailable from that probe until it is time to make a new test.

**4.8. Collating the results from RDDS probes.** The minimum number of active testing probes to consider a measurement valid is 10 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.

**4.9. Placement of RDPS-RDDS probes.** Probes for measuring **RDPS-RDDS** parameters shall be placed inside the networks with the most users across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

## **5. EPP**

**5.1. EPP service availability.** Refers to the ability of the TLD EPP servers as a group, to respond to commands from the Registry accredited Registrars, who already have credentials to the servers. The response shall include appropriate data from the Registry System. An EPP command with “**EPP command RTT**” 5-times higher than the corresponding SLR will be considered as unanswered. ~~For the EPP service to be considered available at during a measurement period, at least, one IPv4 and one IPv6 (if EPP is offered over IPv6) address of the set of EPP servers must have defined results from “EPP tests”.~~ If 51% or more of the EPP testing probes see the EPP service as unavailable during a given time, the EPP service will be considered unavailable.

**5.2. EPP session-command RTT.** Refers to the **RTT** of the sequence of packets that includes the sending of a session command plus the reception of the EPP response for only one EPP session command. For the login command it will include packets needed for starting the TCP session. For the logout command it will include packets needed for closing the TCP session. EPP session commands are those described in section 2.9.1 of EPP RFC 5730. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.

**5.3. EPP query-command RTT.** Refers to the **RTT** of the sequence of packets that includes the sending of a query command plus the reception of the EPP response for only one EPP query command. It does not include packets needed for the start ~~nor~~ or close of ~~neither~~ the EPP ~~nor~~ the TCP session. EPP query commands are those described in section 2.9.2 of EPP RFC 5730. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.

**5.4. EPP transform-command RTT.** Refers to the **RTT** of the sequence of packets that includes the sending of a transform command plus the reception of the EPP response for only one EPP transform command. It does not include packets needed for the start ~~nor~~ or close of ~~neither~~ the EPP ~~nor~~ the TCP session. EPP transform commands are those described in section 2.9.3 of EPP RFC 5730. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.

**5.5. EPP command RTT.** Refers to “**EPP session-command RTT**”, “**EPP query-command RTT**” or “**EPP transform-command RTT**”.

**5.6. EPP test.** Means one EPP command sent to a particular “**IP address**” for one of the EPP servers. Query and transform commands, with the exception of “create”, shall be about existing objects in the Registry System. The response shall include appropriate data from the Registry System. The possible results to an EPP test are: a number in milliseconds corresponding to the “**EPP command RTT**” or undefined/unanswered.

**5.7. Measuring EPP parameters.** Every 5 minutes, ~~every~~-EPP probes ~~shall randomly~~will select one “**IP address**” of the EPP servers of the TLD being monitored and make an “**EPP tests**”; every time ~~they~~it should ~~randomly~~ alternate between the 3 different types of commands and between the commands inside each ~~type for testing~~category. If an “**EPP test**” ~~result is undefined/gets~~ unanswered, the EPP service will be considered as unavailable from that probe until it is time to make a new test.

**5.8. Collating the results from EPP probes.** The minimum number of active testing probes to consider a measurement valid is ~~10~~5 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.

**5.9. Placement of EPP probes.** Probes for measuring EPP parameters shall be placed inside or close to Registrars points of access to the Internet across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

### 3.6. Emergency Thresholds

<b>Critical Function</b>	<b>Emergency Thresholds</b>	
<del>DNS service (all servers)</del>	<del>4 hour continuous downtime</del>	<del>4 hour downtime / week</del>
<del>DNSSEC proper resolution</del>	<del>4 hour continuous downtime</del>	<del>4 hour downtime / week</del>
<del>SRS (EPP)</del>	<del>5 day continuous downtime</del>	<del>5 day downtime / month</del>
<del>WHOIS/Web based WHOIS</del>	<del>7 day continuous downtime</del>	<del>7 day downtime / month</del>
<del>Data Escrow</del>	<del>Breach of the Registry Agreement caused by missing escrow</del>	

~~deposits as described in Specification 2, Part B, Section 6.~~

The following matrix presents the Emergency Thresholds that, if reached by any of the services mentioned above for a TLD, would cause the Emergency Transition of the Critical Functions as specified in Section 2.13. of this Agreement.

Critical Function	Emergency Threshold
DNS service (all servers)	4-hour downtime / week
DNSSEC proper resolution	4-hour downtime / week
<del>SRS (EPP)</del>	<del>5-day</del> <u>24-hour</u> downtime / <del>month</del> <u>week</u>
<del>RDDS (WHOIS/Web-based WHOIS)</del>	<del>7-day</del> <u>24-hour</u> downtime / <del>month</del> <u>week</u>
Data Escrow	Breach of the Registry Agreement caused by missing escrow deposits as described in Specification 2, Part B, Section 6.

## 7. Emergency Escalation

Escalation is strictly for purposes of notifying and investigating possible or potential issues in relation to monitored services. The initiation of any escalation and the subsequent cooperative investigations do not in themselves imply that a monitored service has failed its performance requirements.

Escalations shall be carried out between ICANN and Registry Operators, Registrars and Registry Operator, and Registrars and ICANN. Registry Operators and ICANN must provide said emergency operations departments. Current contacts must be maintained between ICANN and Registry Operators and published to Registrars, where relevant to their role in escalations, prior to any processing of an Emergency Escalation by all related parties, and kept current at all times.

### 7.1. Emergency Escalation initiated by ICANN

Upon reaching 10% of the Emergency thresholds as described in Section 6, ICANN's emergency operations will initiate an Emergency Escalation with the relevant Registry Operator. An Emergency Escalation consists of the following minimum elements: electronic (i.e., email or SMS) and/or voice contact notification to the Registry Operator's emergency operations department with detailed information concerning the issue being escalated, including evidence of monitoring failures, cooperative trouble-shooting of the monitoring failure between ICANN staff and the Registry Operator, and the commitment to begin the process of rectifying issues with either the monitoring service or the service being monitoring.

### 7.2. Emergency Escalation initiated by Registrars

Registry Operator will maintain an emergency operations departments prepared to handle emergency requests from registrars. In the event that a registrar is unable to conduct EPP transactions with the Registry because of a fault with the Registry Service and is unable to either contact (through ICANN mandated methods of communication) the Registry Operator, or the Registry Operator is unable or unwilling to address the fault, the registrar may initiate an Emergency Escalation to the emergency operations department of ICANN. ICANN then may initiate an Emergency Escalation with the Registry Operator as explained above.

### 7.3. Notifications of Outages and Maintenance

In the event that a Registry Operator plans maintenance, they will provide related notice to the ICANN emergency operations department, at least, 24 hours ahead of that maintenance. ICANN's emergency operations department will note planned maintenance times, and suspend Emergency Escalation services for the monitored services during the expected maintenance outage period.

If Registry Operator declares an outage, as per their contractual obligations with ICANN, on services under SLA and performance requirements, it will notify the ICANN emergency operations department. During that declared outage, ICANN's emergency operations department will note and suspend Emergency Escalation services for the monitored services involved.

## 8. Covenants of Performance Measurement

8.1. **No interference.** Registry Operator shall not interfere with measurement **Probes**, including any form of preferential treatment of the requests for the monitored services. Registry Operator shall respond to the measurement tests described in this Specification as it would do with any other request from Internet users (for DNS and RDDS) or registrars (for EPP).

8.2. **ICANN testing registrar.** Registry Operator agrees that ICANN will have a testing registrar used for purposes of measuring the **SLRs** described above. Registry Operator agrees to not provide any differentiated treatment for the testing registrar other than no billing of the transactions. ICANN shall not use the registrar for registering domain names (or other registry objects) for itself or others, except for the purposes of verifying contractual compliance with the conditions described in this Agreement.

**TRADEMARK CLEARINGHOUSE**  
**~~NOVEMBER 2010~~ 15 APRIL 2011**

**1. PURPOSE OF CLEARINGHOUSE**

- 1.1 The Trademark Clearinghouse is a central repository for information to be authenticated, stored, and disseminated pertaining to the rights of trademark holders. ~~As such, ICANN will enter into an arms-length~~ contract with service provider or providers, awarding the right to serve as a Trademark Clearinghouse Service Provider, i.e., to accept, authenticate, validate and facilitate the transmission of information related to certain trademarks. ~~This entity or these entities will have an “arms-length” relationship with ICANN. ICANN will not perform these tasks.~~
- 1.2 The Clearinghouse will be required to separate its two primary functions: (i) authentication and validation of the trademarks in the Clearinghouse; and (ii) serving as a database to provide information to the new gTLD registries to support pre-launch Sunrise or Trademark Claims Services. Whether the same provider could serve both functions or whether two providers will be determined in the tender process.
- 1.3 The Trademark Clearinghouse Service Provider will be required to maintain a separate Trademark Clearinghouse database, and may not store any data in the Clearinghouse database related to its provision of ancillary services, if any.
- 1.4 The Registry shall only need to connect with one centralized database to obtain the information it needs to conduct its Sunrise or Trademark Claims Services regardless of the details of the Trademark Clearinghouse Service Provider’s contract(s) with ICANN.
- 1.5 Trademark Clearinghouse Service Provider may provide ancillary services, as long as those services and any data used for those services are kept separate from the Clearinghouse database.
- 1.6 The Clearinghouse database will be a repository of authenticated information and disseminator of the information to a limited number of recipients. Its functions will be performed in accordance with a limited charter, and will not have any discretionary powers other than what will be set out in the charter with respect to authentication and validation. The Clearinghouse administrator(s) cannot create policy. Before material changes are made to the Clearinghouse functions, they will be reviewed through the ICANN public participation model.
- 1.7. Inclusion in the Clearinghouse is not proof of any right, nor does it create any legal rights. Failure to submit trademarks into the Clearinghouse should not be perceived to be lack of vigilance by trademark holders or a waiver of any rights, nor can any negative influence be drawn from such failure.

## 2. SERVICE PROVIDERS

- 2.1 The selection of Trademark Clearinghouse Service Provider(s) will be subject to predetermined criteria, but the foremost considerations ~~should~~will be the ability to store, authenticate, validate and disseminate the data at the highest level of technical stability and security without interference with the integrity or timeliness of the registration process or registry operations.
- 2.2 Functions – Authentication/Validation; Database Administration. Public commentary has suggested that the best way to protect the integrity of the data and to avoid concerns that arise through sole-source providers would be to separate the functions of database administration and data authentication/validation.
- 2.2.1 One entity will authenticate registrations ensuring the word marks qualify as registered or are court-validated word marks or word marks that are protected by statute or treaty. This entity would also be asked to ~~validate~~ensure that proof of use of marks ~~that are from jurisdictions that do not conduct substantive review before registration is provided, which can be demonstrated by furnishing a signed declaration and one specimen of current use.~~
- 2.2.2 The second entity will maintain the database and provide Sunrise and Trademark Claims Services (described below).
- 2.3 Discretion will be used, balancing effectiveness, security and other important factors, to determine whether ICANN will contract with one or two entities - one to authenticate and validate, and the other to, administer in order to preserve integrity of the data.
- 2.4 Contractual Relationship.
- 2.4.1 The Clearinghouse shall be separate and independent from ICANN. It will operate based on market needs and collect fees from those who use its services. ICANN may coordinate or specify interfaces used by registries and registrars, and provide some oversight or quality assurance function to ensure rights protection goals are appropriately met.
- 2.4.2 The Trademark Clearinghouse Service Provider(s) (authenticator/validator and administrator) will be selected through an open and transparent process to ensure low costs and reliable, consistent service for all those utilizing the Clearinghouse services.
- 2.4.3 The Service Provider(s) providing the authentication of the trademarks submitted into the Clearinghouse shall adhere to rigorous standards and requirements that would be specified in an ICANN contractual agreement.

- 2.4.4 The contract shall include service level requirements, customer service availability (with the goal of seven days per week, 24 hours per day, 365 days per year), data escrow requirements, and equal access requirements for all persons and entities required to access the Trademark Clearinghouse database.
- 2.4.5 To the extent practicable, the contract should also include indemnification by Service Provider for errors such as false positives for participants such as Registries, ICANN, Registrants and Registrars.
- 2.5. Service Provider Requirements. The Clearinghouse Service Provider(s) should utilize regional marks authentication service providers (whether directly or through sub-contractors) to take advantage of local experts who understand the nuances of the trademark in question. Examples of specific performance criteria details in the contract award criteria and service-level-agreements are:
  - 2.5.1 provide 24 hour accessibility seven days a week (database administrator);
  - 2.5.2 employ systems that are technically reliable and secure (database administrator);
  - 2.5.3 use globally accessible and scalable systems so that multiple marks from multiple sources in multiple languages can be accommodated and sufficiently cataloged (database administrator and validator);
  - 2.5.4 accept submissions from all over the world - the entry point for trademark holders to submit their data into the Clearinghouse database could be regional entities or one entity;
  - 2.5.5 allow for multiple languages, with exact implementation details to be determined;
  - 2.5.6 provide access to the Registrants to verify and research Trademark Claims Notices;
  - 2.5.7 have the relevant experience in database administration, validation or authentication, as well as accessibility to and knowledge of the various relevant trademark laws (database administrator and authenticator); and
  - 2.5.8 ensure through performance requirements, including those involving interface with registries and registrars, that neither domain name registration timeliness, nor registry or registrar operations will be hindered (database administrator).

### **3. CRITERIA FOR TRADEMARK INCLUSION IN CLEARINGHOUSE**

- 3.1 The trademark holder will submit to one entity – a single entity for entry will facilitate access to the entire Clearinghouse database. If regional entry points are used, ICANN will publish an information page describing how to locate regional submission points.

Regardless of the entry point into the Clearinghouse, the authentication procedures established will be uniform.

- 3.2 The proposed standards for inclusion in the Clearinghouse are:
- 3.2.1 Nationally or multi-nationally registered word marks from all jurisdictions ~~(including from countries where there is no substantive review).~~
  - 3.2.2 Any word mark that has been validated through a court of law or other judicial proceeding.
  - 3.2.3 Any word mark protected by a statute or treaty ~~currently in effect and that was in effect on or before 26 June 2008.~~  
in effect at the time the mark is submitted to the Clearinghouse for inclusion.
- ~~3.3 No common law marks should be included in the Trademark Clearinghouse Database, except for court-validated common law marks or those protected by statute or treaty as set forth herein. This shall not preclude any gTLD registry from entering into a separate agreement, with no ICANN involvement, with the Clearinghouse Service Provider to collect and verify other information for ancillary services, provided that any such information is held separate from the Trademark Clearinghouse Database.~~
- 3.2.4 Other marks that constitute intellectual property.
  - 3.2.5 Protections afforded to trademark registrations do not extend to applications for registrations, marks within any opposition period or registered marks that were the subject of successful invalidation, cancellation or rectification proceedings.
- 3.43 The type of data supporting ~~an application for~~entry of a registered word mark ~~might~~into the Clearinghouse must include a copy of the registration or the relevant ownership information, including the requisite registration number(s), the jurisdictions where the registrations have issued, and the name of the owner of record.
- 3.54 Data supporting entry of a judicially validated word mark into the Clearinghouse must include the court documents, properly entered by the court, evidencing the validation of a given word mark.
- 3.65 Data supporting entry into the Clearinghouse of word marks protected by a statute or treaty ~~currently in effect and that was in effect on or before 26 June 2008~~at the time the mark is submitted to the Clearinghouse for inclusion, must include a copy of the relevant portion of the statute or treaty and evidence of its effective date.
- ~~3.63.6~~ Data supporting entry into the Clearinghouse of marks that constitute intellectual property of types other than those set forth in sections 3.2.1-3.2.3 above shall be determined by the registry operator and the Clearinghouse based on the services any given registry operator chooses to provide.

- 3.7 Registrations that include top level extensions such as “icann.org” or “.icann” as the word mark will not be permitted in the Clearinghouse regardless of whether that mark has been registered or it has been otherwise validated or protected (e.g., if a mark existed for icann.org or .icann, neither will not be permitted in the Clearinghouse).
- 3.68 All mark holders seeking to have their marks included in the Clearinghouse will be required to submit a declaration, affidavit, or other sworn statement that the information provided is true and current and has not been supplied for an improper purpose. The mark holder will also be required to attest that it will keep the information supplied to the Clearinghouse current so that if, during the time the mark is included in the Clearinghouse, a registration gets cancelled or is transferred to another entity, or in the case of a court- or Clearinghouse-validated mark the holder abandons use of the mark, the mark holder has an affirmative obligation to notify the Clearinghouse. There will be penalties for failing to keep information current. Moreover, it is anticipated that there will be a process whereby registrations can be removed from the Clearinghouse if it is discovered that the marks are procured by fraud or if the data is inaccurate.
- 3.79 As an additional safeguard, the data will have to be renewed periodically by any mark holder wishing to remain in the Clearinghouse. Electronic submission should facilitate this process and minimize the cost associated with it. The reason for periodic authentication is to streamline the efficiencies of the Clearinghouse and the information the registry operators will need to process and limit the marks at issue to the ones that are in use.

#### 4. USE OF CLEARINGHOUSE DATA

- 4.1 All mark holders seeking to have their marks included in the Clearinghouse will have to consent to the use of their information by the Clearinghouse. However, such consent would extend only to use in connection with the stated purpose of the Trademark Clearinghouse Database: for Sunrise or Trademark Claims services. The reason for such a provision would be to presently prevent the Clearinghouse from using the data in other ways: without permission. There shall be no bar on the Trademark Clearinghouse Service Provider or other third party service providers providing ancillary services on a non-exclusive basis.
- 4.2 In order not to create a competitive advantage, the Trademark Clearinghouse Database (as well as other relevant data obtained by/in the Trademark Clearinghouse to perform ancillary services) should be licensed to competitors interested in providing ancillary services on equal and non-discriminatory terms and on commercially reasonable terms: if the mark holders agree. Accordingly, two licensing options will be offered to the mark holder: (a) a license to use its data for all required features of the Trademark Clearinghouse, with no permitted use of such data for ancillary services either by the

Trademark Clearinghouse Service Provider or any other entity; or (b) license to use its data for the mandatory features of the Trademark Clearinghouse and for any ancillary uses reasonably related to the protection of marks in new gTLDs, which would include a license to allow the Clearinghouse to license the use and data in the Trademark Clearinghouse to competitors that also provide those ancillary services. The specific implementation details will be determined, and all terms and conditions related to the provision of such services shall be included in the Trademark Clearinghouse Service Provider's contract with ICANN and subject to ICANN review.

~~4.3 If the Trademark Clearinghouse Service Provider does provide ancillary services, any information should be stored in a separate database.~~

4.3 Access by the Registrant to verify and research Trademark Claims Notices shall not be considered an ancillary service, and shall be provided at no cost to the Registrant. Misuse of the data by the service providers would be grounds for immediate termination.

## 5. DATA AUTHENTICATION AND VALIDATION GUIDELINES

5.1 One core function for inclusion in the Clearinghouse would be to authenticate that the data meets certain minimum criteria. As such, the following minimum criteria are suggested:

5.1.1 An acceptable list of data authentication sources, i.e. the web sites of patent and trademark offices throughout the world, third party providers who can obtain information from various trademark offices;

5.1.2 Name, address and contact information of the applicant is accurate, current and matches that of the registered owner of the trademarks listed;

5.1.3 Electronic contact information is provided and accurate;

5.1.4 The registration numbers and countries match the information in the respective trademark office database for that registration number.

5.2 For validation of marks by the Clearinghouse that were not ~~previously validated at registration or~~ protected via a court, statute or treaty, the mark holder shall be required to provide evidence of ~~continuous~~ use of the mark in connection with the bona fide offering for sale of goods or services prior to application for inclusion in the Clearinghouse. Acceptable evidence of use will be a signed declaration and a single specimen of current use, which might be consist of labels, tags, containers, advertising, brochures, screen shots, ~~and/or~~ something else that evidences continued current use.

## 6. MANDATORY ~~PRE-LAUNCH SERVICES~~ RIGHTS PROTECTION MECHANISMS

~~6.1~~—All new gTLD registries will be required to use the Trademark Clearinghouse to support its pre-launch or initial launch period rights protection mechanisms (RPMs) ~~that must~~. These RPMs, at a minimum, must consist of ~~either a Sunrise or a~~ Trademark Claims ~~Service~~. ~~Such services shall meet the minimum standards specified in the IRT Report, which shall be incorporated by reference herein (see <http://www.icann.org/en/topics/new-gtlds/irt-final-report-trademark-protection-29may09-en.pdf>.) There is no requirement that a registry adopt ~~both of these RPMs~~ service and a Sunrise process.~~

~~6.2~~—~~The~~ 1 Trademark Claims ~~Notices~~ service

6.1.1 New gTLD Registry Operators must provide Trademark Claims services during an initial launch period for marks in the Trademark Clearinghouse. This launch period must occur for at least the first 60 days that registration is open for general registration.

6.1.2 A Trademark Claims service is intended to provide clear notice to the Registrant of the scope of the mark holder's rights in order to minimize the chilling effect on registrants- (Trademark Claims Notice). A form that describes the required elements is attached. The specific statement by Registrant warrants that: (i) the Registrant has received notification that the mark(s) is included in the Clearinghouse; (ii) the Registrant has received and understood the notice; and (iii) to the best of the Registrant's knowledge, the registration and use of the requested domain name will not infringe on the rights that are the subject of the notice.

6.1.3 The Trademark Claims Notice should provide Registrant access to the Trademark Clearinghouse Database information referenced in the Trademark Claims Notice to enhance understanding of the Trademark rights being claimed by the trademark holder. These links (or other sources) shall be provided in real time without cost to the Registrant. Preferably, the Trademark Claims Notice should be provided in the language used for the rest of the interaction with the registrar or registry, but it is anticipated that at the very least in the most appropriate UN-sponsored language (as specified by the prospective registrant or registrar/registry). ~~Then, if~~

6.1.4 If the domain name is registered in the Clearinghouse, the registrar (again through an interface with the Clearinghouse) will notify the mark holders(s) of the registration. This notification should not be before the registration is effectuated so as not to provide an opportunity for a mark holder to

inappropriately attempt to block a legitimate registrant from registering a name in which the registrant has legitimate rights.

6.4.1.5 The Trademark Clearinghouse Database will be structured to report to registries ~~domain names~~when registrants are attempting to register a domain name that ~~are~~is considered an “Identical Match” with the ~~validated marks~~mark in the Clearinghouse. “Identical Match” means that the domain name consists of the complete and identical textual elements of the mark. In this regard: (a) spaces contained within a mark that are either replaced by hyphens (and vice versa) or omitted; (b) only certain special characters contained within a trademark are spelled out with appropriate words describing it (@ and &); (c) punctuation or special characters contained within a mark that are unable to be used in a second-level domain name may either be (i) omitted or (ii) replaced by spaces, hyphens or underscores and still be considered identical matches; and (d) no plural and no “marks contained” would qualify for inclusion.

~~6.5 — Notification should be limited to identical marks so as to ensure operational integrity, limitation of overly broad notifications and an unmanageable volume of processing by the Clearinghouse.~~

## ~~7. — PROTECTION FOR MARKS IN CLEARINGHOUSE~~

~~7.1 — New gTLD registries must provide Sunrise or Trademark Claims services for marks in the Trademark Clearinghouse. As described below, the scope of registered marks used by the Claims Service is broader than those used for Sunrise periods.~~

~~7.1.2 — For Trademark Claims services — Registries must recognize all word marks that have been or are: (i) nationally or multi-nationally registered (regardless of whether the country of registration conducts a substantive review); (ii) court-validated; or (iii) specifically protected by a statute or treaty currently in effect and that was in effect on or before 26 June 2008.~~

~~7.1.3 — For Sunrise services — Registries must recognize all word marks: (i) nationally or multi-nationally registered in a jurisdiction that conducts a substantive evaluation of trademark applications prior to registration; or (ii) that have been court- or Trademark Clearinghouse-validated; or (iii) that are specifically protected by a statute or treaty currently in effect and that was in effect on or before 26 June 2008.~~

~~7.2 — In certain cases, registries shall have discretion whether to include protections for additional marks that do not satisfy these eligibility requirements.~~

~~7.3 Definition: Substantive evaluation upon registration has essentially three requirements: (i) evaluation on absolute grounds—to ensure that the applied for mark can in fact serve as a trademark; (ii) evaluation on relative grounds—to determine if previously filed marks preclude the registration; and (iii) evaluation of use—to ensure that the applied for mark is in current use.~~

~~The Trademark Clearinghouse or its agent shall develop and publish a list of the countries that conduct substantive review upon trademark registration.~~

~~7.4 Substantive evaluation by Trademark Clearinghouse validation service provider shall require: (i) evaluation on absolute grounds; and (ii) evaluation of use.~~

#### 7.56.2 Sunrise service

6.2.1 Sunrise registration services must be offered for a minimum of 30 days during the pre-launch phase and notice must be provided to all trademark holders in the Clearinghouse if someone is seeking a sunrise registration. This notice will be provided to holders of marks in the Clearinghouse that are an Identical Match to the name to be registered during Sunrise.

6.2.2 Sunrise Registration Process. ~~In cases where the registry opts to provide For~~ a Sunrise ~~registration~~ service, sunrise eligibility requirements (SERs) will be met as a minimum requirement, verified by Clearinghouse data, and incorporates a Sunrise Dispute Resolution Policy (SDRP).

~~7.5.16.2.3~~ The proposed SERs include: (i) ownership of a mark (that satisfies the criteria in section ~~7.1 above~~) ~~on or before the effective date of the registry agreement and was applied for on or before ICANN publishes new gTLD application list that is an identical match (as defined in section 6 above) to the applied for domain name;~~ 2 below), (ii) optional registry elected requirements re: international class of goods or services covered by registration; (iii) representation that all provided information is true and correct; and (iv) provision of data sufficient to document rights in the trademark.

7.56.2.4 The proposed SRDP must allow challenges based on at least the following four grounds: (i) at time the challenged domain name was registered, the registrant did not own a registration of national effect; (ii) the domain name is not identical to the mark on which the registrant based its Sunrise registration; (iii) the registration on which the registrant based its Sunrise registration is not of national effect; and (iv) the registration on which the domain name registrant based its Sunrise registration did not issue on or before the effective date of the Registry Agreement and was not applied for on or before ICANN announced the applications received.

~~76.2.5.3~~ The Clearinghouse will maintain the SERs, validate and authenticate marks, as applicable, and hear challenges.

## 7. PROTECTION FOR MARKS IN CLEARINGHOUSE

The scope of registered marks that must be honored by registries in providing Trademarks Claims services is broader than those that must be honored by registries in Sunrise services.

7.1 For Trademark Claims services - Registries must recognize and honor all word marks that have been or are: (i) nationally or multi-nationally registered; (ii) court-validated; or (iii) specifically protected by a statute or treaty in effect at the time the mark is submitted to the Clearinghouse for inclusion. No demonstration of use is required.

7.2 For Sunrise services - Registries must recognize and honor all word marks: (i) nationally or multi-nationally registered and for which proof of use – which can be a declaration and a single specimen of current use – was submitted to, and validated by, the Trademark Clearinghouse; or (ii) that have been court-validated; or (iii) that are specifically protected by a statute or treaty currently in effect and that was in effect on or before 26 June 2008.

## **8. COSTS OF CLEARINGHOUSE**

Costs should be completely borne by the parties utilizing the services. ~~The Clearinghouse should not be expected to pay fees to ICANN~~Trademark holders will pay to register the Clearinghouse, and registries will pay for Trademark Claims and Sunrise services. Registrars and others who avail themselves of Clearinghouse services will pay the Clearinghouse directly.

**TRADEMARK NOTICE**

[In English and the language of the registration agreement]

You have received this Trademark Notice because you have applied for a domain name which matches at least one trademark record submitted to the Trademark Clearinghouse.

You may or may not be entitled to register the domain name depending on your intended use and whether it is the same or significantly overlaps with the trademarks listed below.

***Your rights to register this domain name may or may not be protected as noncommercial use or "fair use" by the laws of your country. [in bold italics or all caps]***

Please read the trademark information below carefully, including the trademarks, jurisdictions, and goods and service for which the trademarks are registered. Please be aware that not all jurisdictions review trademark applications closely, so some of the trademark information below may exist in a national or regional registry which does not conduct a thorough or substantive review of trademark rights prior to registration.

***If you have questions, you may want to consult an attorney or legal expert on trademarks and intellectual property for guidance.***

If you continue with this registration, you represent that, you have received and you understand this notice and to the best of your knowledge, your registration and use of the requested domain name will not infringe on the trademark rights listed below. The following [number] Trademarks are listed in the Trademark Clearinghouse:

1. Mark: Jurisdiction: Goods: [click here for more if maximum character count is exceeded] International Class of Goods and Services or Equivalent if applicable: Trademark Registrant: Trademark Registrant Contact:

[with links to the TM registrations as listed in the TM Clearinghouse]

2. Mark: Jurisdiction: Goods: [click here for more if maximum character count is exceeded] International Class of Goods and Services or Equivalent if applicable: Trademark Registrant:

Trademark Registrant Contact:

\*\*\*\*\* [with links to the TM registrations as listed in the TM Clearinghouse]

X. 1. Mark: Jurisdiction: Goods: [click here for more if maximum character count is exceeded] International Class of Goods and Services or Equivalent if applicable: Trademark Registrant: Trademark Registrant Contact:

**UNIFORM RAPID SUSPENSION SYSTEM (“URS”)**

~~Draft – November 2010~~ 15 April 2011

**DRAFT PROCEDURE****1. Complaint**

## 1.1 Filing the Complaint

- a) Proceedings are initiated by electronically filing with a URS Provider a Complaint outlining the trademark rights and the actions complained of entitling the trademark holder to relief.
- b) Each Complaint must be accompanied by the appropriate fee, which is under consideration. The fees will be non-refundable.
- c) One Complaint is acceptable for multiple related companies against one Registrant, but only if the companies complaining are related. Multiple Registrants can be named in one Complaint only if it can be shown that they are in some way related. There will not be a minimum number of domain names imposed as a prerequisite to filing.

## 1.2 Contents of the Complaint

The form of the Complaint will be simple and as formulaic as possible. There will be a ~~5,000 word limit, excluding attachments, for the Form~~ Complaint. The Form Complaint ~~must~~shall include space for the following:

- 1.2.1 Name, email address and other contact information for the Complaining Party (Parties).
- 1.2.2 Name, email address and contact information for any person authorized to act on behalf of Complaining Parties.
- 1.2.3 Name of Registrant (i.e. relevant information available from Whois) and Whois listed available contact information for the relevant domain name(s).
- 1.2.4 The specific domain name(s) that are the subject of the Complaint. For each domain name, the Complainant ~~should~~shall include a copy of the currently available Whois information and a description and copy, if available, of the offending portion of the website content associated with each domain name that is the subject of the Complaint.
- 1.2.5 The specific trademark/service marks upon which the Complaint is based and pursuant to which the Complaining Parties are asserting their rights to them, for which goods and in connection with what services.

1.2.6 A ~~description~~ statement of the grounds upon which the Complaint is based setting forth facts showing that the Complaining Party is entitled to relief, namely:

1.2.6.1. that the registered domain name is identical or confusingly similar to a word mark: (i) ~~in for~~ which the Complainant holds a valid registration ~~issued by a jurisdiction that conducts a substantive examination<sup>†</sup> of trademark applications prior to registration and that is in current use~~; or (ii) that has been validated through court proceedings ~~or the Trademark Clearinghouse~~; or (iii) that is specifically protected by a statute or treaty ~~currently~~ in effect ~~and that at the time the URS complaint is filed.~~

- a. Use can be shown by demonstrating that evidence of use – which can be a declaration and one specimen of current use in commerce – was in effect on or before 26 June 2008; and submitted to, and validated by, the Trademark Clearinghouse)
- b. Proof of use may also be submitted directly with the URS Complaint.

and

1.2.6.2. that the Registrant has no legitimate right or interest to the domain name; and

1.2.6.3. that the domain was registered and is being used in bad faith.

g) — A non-exclusive list of circumstances that demonstrate bad faith registration and use by the Registrant include:

- a. \_\_\_\_\_ Registrant has registered or acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of documented out-of pocket costs directly related to the domain name; or
- b. \_\_\_\_\_ Registrant has registered the domain name in order to prevent the trademark holder or service mark from reflecting the mark in a corresponding domain name, provided that Registrant has engaged in a pattern of such conduct; or

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<sup>†</sup> ~~Definition: Substantive evaluation upon registration has essentially three requirements: (i) evaluation on absolute grounds – to ensure that the applied for mark can in fact serve as a trademark; (ii) evaluation on relative grounds – to determine if previously filed marks preclude the registration; and (iii) evaluation of use – to ensure that the applied for mark is in current use.~~

c. Registrant registered the domain name primarily for the purpose of disrupting the business of a competitor; or

d. By using the domain name Registrant has intentionally attempted to attract for commercial gain, Internet users to Registrant's web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of Registrant's web site or location or of a product or service on that web site or location.

~~h) Finally, 1.2.7 A box in which the Complainant will attest may submit up to 500 words of explanatory free form text.~~

1.2.8. An attestation that the Complaint is not being filed for any improper basis and that there is a sufficient good faith basis for filing the Complaint.

## 2. Fees

~~Fees will be charged by the 2.1 URS Provider. will charge fees to the Complainant.~~ Fees are thought to be in the range of USD 300 per proceeding, but will ultimately be set by the Provider. ~~(The tender offer for potential service providers will indicate that price will be a factor in the award decision.)~~

2.2 A limited "loser pays" model has ~~not~~ been adopted for the URS. Complaints listing twenty-six (26) or more disputed domain names will be subject to an Response Fee which will be refundable to the prevailing party. Under no circumstances shall the Response Fee exceed the fee charged to the Complainant.

## 3. Administrative Review

- 3.1 Complaints will be subjected to an initial administrative review by the URS Provider for compliance with the filing requirements. This is a review to determine that the Complaint contains all of the necessary information, and is not a determination as to whether a *prima facie* case has been established.
- 3.2 The Administrative Review shall be conducted within ~~three (3)~~ two (2) business days of submission of the Complaint to the URS Provider.
- 3.3 Given the rapid nature of this Procedure, and the intended low level of required fees, there will be no opportunity to correct inadequacies in the filing requirements.
- 3.4 If a Complaint is deemed non-compliant with filing requirements, the Complaint will be dismissed without prejudice to the Complainant filing a new complaint. The initial filing fee shall not be refunded in these circumstances.

## 4. Notice and Locking of Domain

- 4.1 Upon completion of the Administrative Review, the URS Provider must ~~first~~immediately notify the registry operator (via email) (“Notice of Complaint”) ~~within 24 hours~~ after the Complaint has been deemed compliant with the filing requirements. Within 24 hours of receipt of the Notice of Complaint from the URS Provider, the registry operator shall “lock” the domain, meaning the registry shall restrict all changes to the registration data, including transfer and deletion of the domain names, but the name will continue to resolve. The registry operator will notify the URS Provider immediately upon locking the domain name (“Notice of Lock”).
- 4.2 Within 24 hours after receiving Notice of Lock from the registry operator, the URS Provider shall notify the Registrant of the Complaint, sending a hard copy of the Notice of Complaint to the addresses listed in the Whois contact information, and providing an electronic copy of the Complaint, advising of the locked status, as well as the effects if the registrant fails to respond and defend against the Complaint. Notices must be clear and understandable to Registrants located globally. The Notice of Complaint shall be in English and translated by the Provider into the predominant language used in the registrant’s country or territory.
- 4.3 All Notices to the Registrant shall be sent through email, fax (where available) and postal mail. The Complaint and accompanying exhibits, if any, shall be served electronically.
- 4.4 The URS Provider shall also electronically notify the registrar of record for the domain name at issue via the addresses the registrar has on file with ICANN.

## 5. The Response

- 5.1 A Registrant will have 14 calendar days from the date the URS Provider sent its Notice of Complaint to the Registrant to electronically file a Response with the URS Provider. Upon receipt, the Provider will electronically send a copy of the Response, and accompanying exhibits, if any, to the Complainant.
- 5.2 No filing fee will be charged if the Registrant files its Response prior to being declared in default or not more than thirty (30) days following a Determination. For Responses filed more than thirty (30) days after a Determination, the Registrant should pay a reasonable ~~fee for re-examination.~~ non-refundable fee for re-examination, plus a Response Fee as set forth in section 2.2 above if the Complaint lists twenty-six (26) or more disputed domain names. The Response Fee will be refundable to the prevailing party.
- 5.3 Upon request by the Registrant, a limited extension of time to respond may be granted by the URS Provider if there is a good faith basis for doing so. In no event shall the extension be for more than seven (7) calendar days.
- 5.4 The Response shall be no longer than ~~5,000~~2,500 words, excluding attachments, and the content of the Response should include the following:

a)5.4.1 Confirmation of Registrant data.

~~b)5.4.2~~ Specific admission or denial of each of the grounds upon which the Complaint is based.

~~c)5.4.3~~ Any defense which contradicts the Complainant's claims.

~~d)5.4.4~~ A statement that the contents are true and accurate.

5.5 In keeping with the intended expedited nature of the URS and the remedy afforded to a successful Complainant, affirmative claims for relief by the Registrant will not be permitted except for an allegation that the Complainant has filed an abusive Complaint.

5.6 Once the Response is filed, and the URS Provider determines that the Response is compliant with the filing requirements of a Response, (which shall be on the same day), the Complaint, Response and supporting materials will immediately be sent to a qualified Examiner, selected by the URS Provider, for review and Determination. All materials submitted are considered by the Examiner.

5.7 The Response can contain any facts refuting the claim of bad faith registration by setting out any of the following circumstances:

~~a)5.7.1~~ Before any notice to Registrant of the dispute, Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

~~b)5.7.2~~ Registrant (as an individual, business or other organization) has been commonly known by the domain name, even if Registrant has acquired no trademark or service mark rights; or

~~c)5.7.3~~ Registrant is making a legitimate or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Such claims, if found by the Examiner to be proved based on its evaluation of all evidence, shall result in a finding in favor of the Registrant.

5.8 The Registrant may also assert Defenses to the Complaint to demonstrate that the Registrant's use of the domain name is not in bad faith by showing, for example, one of the following:

~~a)5.8.1~~ The domain name is generic or descriptive and the Registrant is making fair use of it.

~~b)5.8.2~~ The domain name sites are operated solely in tribute to or in criticism of a person or business that is found by the Examiner to be fair use.

~~c)5.8.3~~ Registrant's holding of the domain name is consistent with an express term of a written agreement entered into by the disputing Parties and that is still in effect.

~~(d)~~5.8.4 The domain name is not part of a wider pattern or series of abusive registrations because the Domain Name is of a significantly different type or character to other domain names registered by the Registrant.

5.9 Other factors for the Examiner to consider:

~~a)~~5.9.1 Trading in domain names for profit, and holding a large portfolio of domain names, are of themselves not indicia of bad faith under the URS. Such conduct, however, may be abusive in a given case depending on the circumstances of the dispute. The Examiner will review each case on its merits.

~~b)~~5.9.2 Sale of traffic (i.e. connecting domain names to parking pages and earning click-per-view revenue) does not in and of itself constitute bad faith under the URS. Such conduct, however, may be abusive in a given case depending on the circumstances of the dispute. The Examiner will take into account:

~~i)~~5.9.2.1.the nature of the domain name;

~~ii)~~5.9.2.2. the nature of the advertising links on any parking page associated with the domain name; and

~~iii)~~5.9.2.3. that the use of the domain name is ultimately the Registrant's responsibility

## 6. Default

6.1 If at the expiration of the 14-day answer period (or extended period if granted), the Registrant does not submit an answer, the Complaint proceeds to Default.

6.2 In either case, the Provider shall provide Notice of Default via email to the Complainant and Registrant, and via mail and fax to Registrant. During the Default period, the Registrant will be prohibited from changing content found on the site to argue that it is now a legitimate use and will also be prohibited from changing the Whois information.

6.3 All Default cases proceed to Examination for review on the merits of the claim.

6.4 If after Examination in Default cases, the Examiner rules in favor of Complainant, Registrant shall have the right to seek relief from Default via de novo review by filing a Response at any time up to ~~two years~~six months after the date of the Notice of Default. The Registrant will also be entitled to request an extension of an additional six months if the extension is requested before the expiration of the initial six-month period.

6.5 If ~~such~~ a Response is filed, after: (i) the Respondent was in Default (so long as the Response is filed in accordance with 6.4 above); and (ii) proper notice is provided in accordance with the notice requirements set forth above, the domain name shall again resolve to the original IP address as soon as practical, but shall remain locked as if the Response had been filed in a timely manner before Default. The filing of a Response after Default is not an appeal; the case is considered as if responded to in a timely manner.

- 6.5 If after Examination in Default case, the Examiner rules in favor of Registrant, the Provider shall notify the Registry Operator to unlock the name and return full control of the domain name registration to the Registrant.

## 7. Examiners

- 7.1 One Examiner selected by the Provider will preside over a URS proceeding.
- 7.2 Examiners should have demonstrable relevant legal background, such as in trademark law, and shall be trained and certified in URS proceedings. Specifically, Examiners shall be provided with instructions on the URS elements and defenses and how to conduct the examination of a URS proceeding.
- 7.3 Examiners used by any given URS Provider shall be rotated to the extent feasible to avoid “forum or examiner shopping.” URS Providers are strongly encouraged to work equally with all certified Examiners, with reasonable exceptions (such as language needs, non-performance, or malfeasance) to be determined on a case by case analysis.

## 8. Examination Standards and Burden of Proof

- 8.1 The standards that the qualified Examiner shall apply when rendering its Determination are whether:
- a)8.1.2 The registered domain name is identical or confusingly similar to a word mark: (i) infor which the Complainant holds a valid registration issued by a jurisdiction that conducts a substantive examination of trademark applications prior to registration and that is in current use; or (ii) that has been validated through court proceedings or the Trademark Clearinghouse; or (iii) that is specifically protected by a statute or treaty currently in effect and that was in effect on or before 26 June 2008 at the time the URS Complaint is filed; and
- b)8.1.2.1 Use can be shown by demonstrating that evidence of use – which can be a declaration and one specimen of current use – was submitted to, and validated by, the Trademark Clearinghouse.
- 8.1.2.2 Proof of use may also be submitted directly with the URS Complaint.
- 8.1.2 The Registrant has no legitimate right or interest to the domain name; and
- c)8.1.3 The domain was registered and is being used in a bad faith.
- 8.2 The burden of proof shall be clear and convincing evidence.
- 8.3 For a URS matter to conclude in favor of the Complainant, the Examiner shall render a Determination that there is no genuine issue of material fact. Such Determination may include that: (i) the Complainant has rights to the name; and (ii) the Registrant has no rights or legitimate interest in the name. This means that the Complainant must present

adequate evidence to substantiate its trademark rights in the domain name (e.g., evidence of a trademark registration and evidence that the domain name was registered and is being used in bad faith in violation of the URS).

- 8.4 If the Examiner finds that the Complainant has not met its burden, or that genuine issues of material fact remain in regards to any of the elements, the Examiner will reject the Complaint under the relief available under the URS. That is, the Complaint shall be dismissed if the Examiner finds that: (1) evidence was presented to indicate that the use of the domain name in question is a non-infringing use or fair use of the trademark; or (2) under the circumstances, ~~and no Response was submitted, a defense would have been possible to show~~ the evidence available to the Examiner shows that the use of the domain name in question is a non-infringing use or fair use of the trademark.
- 8.5 Where there is any genuine contestable issue as to whether a domain name registration and use of a trademark are in bad faith, the Complaint will be denied, the URS proceeding will be terminated without prejudice, e.g., a UDRP, court proceeding or another URS may be filed. The URS is not intended for use in any proceedings with open questions of fact, but only clear cases of trademark abuse.
- 8.6 To restate in another way, if the Examiner finds that all three standards are satisfied by clear and convincing evidence and that there is no genuine contestable issue, then the Examiner shall issue a Determination in favor of the Complainant. If the Examiner finds that any of the standards have not been satisfied, then the Examiner shall deny the relief requested, thereby terminating the URS proceeding without prejudice to the Complainant to proceed with an action in court of competent jurisdiction or under the UDRP.

## 9. Determination

- 9.1 There will be no discovery or hearing; the evidence will be the materials submitted with the Complaint and the Response, and those materials will serve as the entire record used by the Examiner to make a Determination.
- 9.2 If the Complainant satisfies the burden of proof, the Examiner will issue a Determination in favor of the Complainant. The Determination will be published on the URS Provider's website. However, there should be no other preclusive effect of the Determination other than the URS proceeding to which it is rendered.
- 9.3 If the Complainant does not satisfy the burden of proof, the URS proceeding is terminated and full control of the domain name registration shall be returned to the Registrant.
- 9.4 Determinations resulting from URS proceedings will be published by the service provider in a format specified by ICANN, in order to provide notice to the next potential Registrant that the domain was the subject of a URS proceeding.

- 9.5 Determinations shall also be emailed by the URS Provider to the Registrant, the Complainant, the Registrar, and the Registry Operator, and shall specify the remedy and required actions of the registry operator to comply with the Determination.
- 9.6 To conduct URS proceedings on an expedited basis, examination should begin immediately upon the earlier of the expiration of a ~~twenty (20)~~fourteen (14) day Response period, (or extended period if granted), or upon the submission of the Response. A Determination shall be rendered on an expedited basis, with the stated goal that it be rendered within three (3) business days from when Examination began. Absent extraordinary circumstances, however, Determinations must be issued no later than ~~14~~five (5) days after the Response is filed. Implementation details will be developed to accommodate the needs of service providers once they are selected. (The tender offer for potential service providers will indicate that timeliness will be a factor in the award decision.)

## 10. Remedy

- 10.1 If the Determination is in favor of the Complainant, the ~~domain name shall be decision~~ shall be immediately transmitted to the registry operator.
- 10.2 Immediately upon receipt of the Determination, the registry operator shall suspend the domain name, which shall remain suspended for the balance of the registration period and would not resolve to the original web site. The nameservers shall be redirected to an informational web page provided by the URS Provider about the URS. The URS Provider shall not be allowed to offer any other services on such page, nor shall it directly or indirectly use the web page for advertising purposes (either for itself or any other third party). The Whois for the domain name shall continue to display all of the information of the original Registrant except for the redirection of the nameservers. In addition, the Whois shall reflect that the domain name will not be able to be transferred, deleted or modified for the life of the registration.
- 10.2 There shall be an option for a successful Complainant to extend the registration period for one additional year at commercial rates.
- 10.3 No other remedies should be available in the event of a Determination in favor of the Complainant.

## 11. Abusive Complaints

- 11.1 The URS shall incorporate penalties for abuse of the process by trademark holders.
- 11.2 In the event a party is deemed to have filed two (2) abusive Complaints, or one (1) "deliberate material falsehood," that party shall be barred from utilizing the URS for one-year following the date of issuance of a Determination finding a complainant to have: (i) filed its second abusive complaint; or (ii) filed a deliberate material falsehood.
- 11.3 A Complaint may be deemed abusive if the Examiner determines:

- a) 11.3.1 it was presented solely for improper purpose such as to harass, cause unnecessary delay, or needlessly increase the cost of doing business; and
- b) 11.3.2 (i) the claims or other assertions were not warranted by any existing law or the URS standards; or (ii) the factual contentions lacked any evidentiary support
- 11.4 An Examiner may find that Complaint contained a deliberate material falsehood if it contained an assertion of fact, which at the time it was made, was made with the knowledge that it was false and which, if true, would have an impact on the outcome on the URS proceeding.
- 11.5 Two findings of “deliberate material falsehood” shall permanently bar the party from utilizing the URS.
- 11.6 URS Providers shall be required to develop a process for identifying and tracking barred parties, and parties whom Examiners have determined submitted abusive complaints or deliberate material falsehoods.
- 11.7 The dismissal of a complaint for administrative reasons or a ruling on the merits, in itself, shall not be evidence of filing an abusive complaint.
- 11.8 A finding that filing of a complaint was abusive or contained a deliberate materially falsehood can be appealed solely on the grounds that an Examiner abused his/her discretion, or acted in an arbitrary or capricious manner.

## 12. Appeal

- 12.1 Either party shall have a right to seek a de novo appeal of the Determination based on the existing record within the URS proceeding for a reasonable fee to cover the costs of the appeal. An appellant must identify the specific grounds on which the party is appealing, including why the appellant claims the Examiner’s Determination was incorrect.
- 12.2 The fees for an appeal shall be borne by the appellant. A limited right to introduce new admissible evidence that is material to the Determination will be allowed upon payment of an additional fee, provided the evidence clearly pre-dates the filing of the Complaint. The Appeal Panel, to be selected by the Provider, may request, in its sole discretion, further statements or documents from either of the Parties.
- 12.3 Filing an appeal shall not change the domain name’s resolution. For example, if the domain name no longer resolves to the original nameservers because of a Determination in favor of the Complainant, the domain name shall continue to point to the informational page provided by the URS Provider. If the domain name resolves to the original nameservers because of a Determination in favor of the registrant, it shall continue to resolve during the appeal process.
- 12.4 An appeal must be filed within 14 days after a Determination is issued and any Response must be filed 14 days after an appeal is filed.

- 12.5 If a respondent has sought relief from Default by filing a Response within ~~two years~~six months (or the extended period if applicable) of issuance of initial Determination, an appeal must be filed within 14 days from date the second Determination is issued and any Response must be filed 14 days after the appeal is filed.
- 12.6 Notice of appeal and findings by the appeal panel shall be sent by the URS Provider via e-mail to the Registrant, the Complainant, the Registrar, and the Registry Operator.
- 12.7 The Providers' rules and procedures for appeals, other than those stated above, shall apply.

**13. Other Available Remedies**

The URS Determination shall not preclude any other remedies available to the appellant, such as UDRP (if appellant is the Complainant), or other remedies as may be available in a court of competition jurisdiction. A URS Determination for or against a party shall not prejudice the party in UDRP or any other proceedings.

**14. Review of URS**

A review of the URS procedure will be initiated one year after the first Examiner Determination is issued. Upon completion of the review, a report shall be published regarding the usage of the procedure, including statistical information, and posted for public comment on the usefulness and effectiveness of the procedure.

**TRADEMARK POST-DELEGATION DISPUTE RESOLUTION PROCEDURE (TRADEMARK PDDRP)**  
**REVISED — NOVEMBER 2010 15 April 2011**

**1. Parties to the Dispute**

The parties to the dispute will be the trademark holder and the gTLD registry operator. ICANN shall not be a party.

**2. Applicable Rules**

2.1 This procedure is intended to cover Trademark post-delegation dispute resolution proceedings generally. To the extent more than one Trademark PDDRP provider (“Provider”) is selected to implement the Trademark PDDRP, each Provider may have additional rules that must be followed when filing a Complaint. The following are general procedures to be followed by all Providers.

2.2 In the Registry Agreement, the registry operator agrees to participate in all post-delegation procedures and be bound by the resulting Determinations.

**3. Language**

3.1 The language of all submissions and proceedings under the procedure will be English.

3.2 Parties may submit supporting evidence in their original language, provided and subject to the authority of the Expert Panel to determine otherwise, that such evidence is accompanied by an English translation of all relevant text.

**4. Communications and Time Limits**

4.1 All communications with the Provider must be submitted electronically.

4.2 For the purpose of determining the date of commencement of a time limit, a notice or other communication will be deemed to have been received on the day that it is transmitted to the appropriate contact person designated by the parties.

4.3 For the purpose of determining compliance with a time limit, a notice or other communication will be deemed to have been sent, made or transmitted on the day that it is dispatched.

4.4 For the purpose of calculating a period of time under this procedure, such period will begin to run on the day following the date of receipt of a notice or other communication.

4.5 All references to day limits shall be considered as calendar days unless otherwise specified.

## 5. Standing

- 5.1 The mandatory administrative proceeding will commence when a third-party complainant (“Complainant”) has filed a Complaint with a Provider asserting that the Complainant is a trademark holder (which may include either registered or unregistered marks as defined below) claiming that one or more of its marks have been infringed, and thereby the Complainant has been harmed, by the registry operator’s manner of operation or use of the gTLD.
- 5.2 Before proceeding to the merits of a dispute, and before the Respondent is required to submit a substantive Response, or pay any fees, the Provider shall appoint a special one-person Panel to perform an initial “threshold” review (“Threshold Review Panel”).

## 6. Standards

For purposes of these standards, “registry operator” shall include entities directly or indirectly controlling, controlled by or under common control with a registry operator, whether by ownership or control of voting securities, by contract or otherwise where ‘control’ means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether by ownership or control of voting securities, by contract or otherwise.

### 6.1 Top Level:

A complainant must assert and prove, by clear and convincing evidence, that the registry operator’s affirmative conduct in its operation or use of its gTLD string that is identical or confusingly similar to the complainant’s mark, causes or materially contributes to the gTLD doing one of the following:

*(a) taking unfair advantage of the distinctive character or the reputation of the complainant's mark; or*

*(b) ~~unjustifiably~~ impairing the distinctive character or the reputation of the complainant's mark; or*

*(c) creating ~~an impermissible~~ likelihood of confusion with the complainant's mark.*

An example of infringement at the top-level is where a TLD string is identical to a trademark and then the registry operator holds itself out as the beneficiary of the mark.

### 6.2 Second Level

Complainants are required to prove, by clear and convincing evidence that, through the registry operator’s affirmative conduct:

*(a) there is a substantial pattern or practice of specific bad faith intent by the registry operator to profit from the sale of trademark infringing domain names; and*

*(b) the registry operator's bad faith intent to profit from the systematic registration of domain names within the gTLD that are identical or confusingly similar to the complainant's mark, which:*

*(i) takes unfair advantage of the distinctive character or the reputation of the complainant's mark; or*

*(ii) ~~unjustifiably~~ impairs the distinctive character or the reputation of the complainant's mark, or*

*(iii) creates ~~an impermissible~~ likelihood of confusion with the complainant's mark.*

In other words, it is not sufficient to show that the registry operator is on notice of possible trademark infringement through registrations in the gTLD. The registry operator is not liable under the PDDRP solely because: (i) infringing names are in its registry; or (ii) the registry operator knows that infringing names are in its registry; or (iii) the registry operator did not monitor the registrations within its registry.

A registry operator is not liable under the PDDRP for any domain name registration that: (i) is registered by a person or entity that is unaffiliated with the registry operator; (ii) is registered without the direct or indirect encouragement, inducement, initiation or direction of any person or entity affiliated with the registry operator; and (iii) provides no direct or indirect benefit to the registry operator other than the typical registration fee (which may include other fees collected incidental to the registration process for value added services such enhanced registration security).

An example of infringement at the second level is where a registry operator has a pattern or practice of actively and systematically encouraging registrants to register second level domain names and to take unfair advantage of the trademark to the extent and degree that bad faith is apparent. Another example of infringement at the second level is where a registry operator has a pattern or practice of acting as the registrant or beneficial user of infringing registrations, to monetize and profit in bad faith.

## 7. Complaint

### 7.1 Filing:

The Complaint will be filed electronically. Once the Administrative Review has been completed and the Provider deems the Complaint be in compliance, the Provider will electronically serve the Complaint and serve a paper notice on the registry operator that is the subject of the Complaint ("Notice of Complaint") consistent with the contact information listed in the Registry Agreement.

## 7.2 Content:

- 7.2.1 The name and contact information, including address, phone, and email address, of the Complainant, and, to the best of Complainant's knowledge, the name and address of the current owner of the registration.
- 7.2.2 The name and contact information, including address, phone, and email address of any person authorized to act on behalf of Complainant.
- 7.2.3 A statement of the nature of the dispute, and any relevant evidence, which ~~should~~shall include:
- (a) The particular legal rights claim being asserted, the marks that form the basis for the dispute and a short and plain statement of the basis upon which the Complaint is being filed.
  - (b) A detailed explanation of how the Complainant's claim meets the requirements for filing a claim pursuant to that particular ground or standard.
  - (c) A detailed explanation of the validity of the Complaint and why the Complainant is entitled to relief.
  - (d) A statement that the Complainant has at least 30 days prior to filing the Complaint notified the registry operator in writing of: (i) its specific concerns and specific conduct it believes is resulting in infringement of Complainant's trademarks and (ii) its willingness to meet to resolve the issue.
  - (e) An explanation of how the mark is used by the Complainant (including the type of goods/services, period and territory of use – including all on-line usage) or otherwise protected by statute, treaty or has been validated by a court or the Clearinghouse.
  - (f) Copies of any documents that the Complainant considers to evidence its basis for relief, including web-site evidence of current use of the Trademark at issue in the Complaint and domain name registrations.
  - (g) A statement that the proceedings are not being brought for any improper purpose.
  - (h) A statement describing how the registration at issue has harmed the trademark owner.

- 7.3 Complaints will be limited 5,000 words and 20 pages, excluding attachments, unless the Provider determines that additional material is necessary.

- 7.4 At the same time the Complaint is filed, the Complainant will pay a non-refundable filing fee in the amount set in accordance with the applicable Provider rules. In the event that the filing fee is not paid within 10 days of the receipt of the Complaint by the Provider, the Complaint will be dismissed without prejudice.

## 8. Administrative Review of the Complaint

- 8.1 All Complaints will be reviewed by the Provider within five (5) business days of submission to the Provider to determine whether the Complaint contains all necessary information and complies with the procedural rules.
- 8.2 If the Provider finds that the Complaint complies with procedural rules, the Complaint will be deemed filed, and the proceedings will continue to the Threshold Review. If the Provider finds that the Complaint does not comply with procedural rules, it will electronically notify the Complainant of such non-compliance and provide the Complainant five (5) business days to submit an amended Complaint. If the Provider does not receive an amended Complaint within the five (5) business days provided, it will dismiss the Complaint and close the proceedings without prejudice to the Complainant's submission of a new Complaint that complies with procedural rules. Filing fees will not be refunded.
- 8.3 If deemed compliant, the Provider will electronically serve the Complaint on the registry operator and serve the Notice of Complaint consistent with the contact information listed in the Registry Agreement.

## 9. Threshold Review

- 9.1 Provider shall establish a Threshold Review Panel, consisting of one panelist selected by the Provider, for each proceeding within five (5) business days after completion of Administrative Review and the Complaint has been deemed compliant with procedural rules.
- 9.2 The Threshold Review Panel shall be tasked with determining whether the Complainant satisfies the following criteria:

- 9.2.1 The Complainant is a holder of a word mark that: (i) ~~issued by a jurisdiction that conducts a substantive examination of trademark applications prior to registration~~ is nationally or multi-nationally registered and that is in current use; or (ii) ~~that has been court- or Trademark Clearinghouse-validated through court proceedings~~; or (iii) that is specifically protected by a statute or treaty ~~currently in effect and that at the time the PDDRP complaint is filed~~;

9.2.1.1 Use can be shown by demonstrating that evidence of use – which can be a declaration and one specimen of current use – was in effect on or before 26 June 2008; submitted to, and validated by, the Trademark Clearinghouse

9.2.1.2 Proof of use may also be submitted directly with the Complaint.

9.2.2 The Complainant has asserted that it has been materially harmed as a result of trademark infringement;

9.2.3 The Complainant has asserted facts with sufficient specificity that, if everything the Complainant asserted is true, states a claim under the Top Level Standards herein

OR

The Complainant has asserted facts with sufficient specificity that, if everything the Complainant asserted is true, states a claim under the Second Level Standards herein;

9.2.4 The Complainant has asserted that: (i) at least 30 days prior to filing the Complaint the Complainant notified the registry operator in writing of its specific concerns and specific conduct it believes is resulting in infringement of Complainant's trademarks, and its willingness to meet to resolve the issue; (ii) whether the registry operator responded to the Complainant's notice of specific concerns; and (iii) if the registry operator did respond, that the Complainant attempted to engage in good faith discussions to resolve the issue prior to initiating the PDDRP.

9.3 Within ten (10) business days of date Provider served Notice of Complaint, the registry operator shall have the opportunity, but is not required, to submit papers to support its position as to the Complainant's standing at the Threshold Review stage. If the registry operator chooses to file such papers, it must pay a filing fee.

9.4 If the registry operator submits papers, the Complainant shall have ten (10) business days to submit an opposition.

9.5 The Threshold Review Panel shall have ten (10) business days from due date of Complainant's opposition or the due date of the registry operator's papers if none were filed, to issue Threshold Determination.

9.6 Provider shall electronically serve the Threshold Determination on all parties.

9.7 If the Complainant has not satisfied the Threshold Review criteria, the Provider will dismiss the proceedings on the grounds that the Complainant lacks standing and declare that the registry operator is the prevailing party.

9.8 If the Threshold Review Panel determines that the Complainant has standing and satisfied the criteria then the Provider will commence the proceedings on the merits.

## **10. Response to the Complaint**

10.1 The registry operator must file a Response to each Complaint within forty-five (45) days after the date of the Threshold Review Panel Declaration.

- 10.2 The Response will comply with the rules for filing of a Complaint and will contain the name and contact information for the registry operator, as well as a point-by-point response to the statements made in the Complaint.
- 10.3 The Response must be filed with the Provider and the Provider must serve it upon the Complainant in electronic form with a hard-copy notice that it has been served.
- 10.4 Service of the Response will be deemed effective, and the time will start to run for a Reply, upon confirmation that the electronic Response and hard-copy notice of the Response was sent by the Provider to the addresses provided by the Complainant.
- 10.5 If the registry operator believes the Complaint is without merit, it will affirmatively plead in its Response the specific grounds for the claim.

**11. Reply**

- 11.1 The Complainant is permitted ten (10) days from Service of the Response to submit a Reply addressing the statements made in the Response showing why the Complaint is not “without merit.” A Reply may not introduce new facts or evidence into the record, but shall only be used to address statements made in the Response. Any new facts or evidence introduced in a Response shall be disregarded by the Expert Panel.
- 11.2 Once the Complaint, Response and Reply (as necessary) are filed and served, a Panel will be appointed and provided with all submissions.

**12. Default**

- 12.1 If the registry operator fails to respond to the Complaint, it will be deemed to be in default.
- 12.2 Limited rights to set aside the finding of default will be established by the Provider, but in no event will they be permitted absent a showing of good cause to set aside the finding of default.
- 12.3 The Provider shall provide notice of Default via email to the Complainant and registry operator.
- 12.4 All Default cases shall proceed to Expert Determination on the merits.

**13. Expert Panel**

- 13.1 The Provider shall establish an Expert Panel within 21 days after receiving the Reply, or if no Reply is filed, within 21 days after the Reply was due to be filed.
- 13.2 The Provider appoint a one-person Expert Panel, unless any party requests a three-member Expert Panel. No Threshold Panel member shall serve as an Expert Panel member in the same Trademark PDDRP proceeding.

- 13.3 In the case where either party requests a three-member Expert Panel, each party (or each side of the dispute if a matter has been consolidated) shall select an Expert and the two selected Experts shall select the third Expert Panel member. Such selection shall be made pursuant to the Provider's rules or procedures. Trademark PDDRP panelists within a Provider shall be rotated to the extent feasible.
- 13.4 Expert Panel member must be independent of the parties to the post-delegation challenge. Each Provider will follow its adopted procedures for requiring such independence, including procedures for challenging and replacing a panelist for lack of independence.

#### **14. Costs**

- 14.1 The Provider will estimate the costs for the proceedings that it administers under this procedure in accordance with the applicable Provider rules. Such costs will be estimated to cover the administrative fees of the Provider, the Threshold Review Panel and the Expert Panel, and are intended to be reasonable.
- 14.2 The Complainant shall be required to pay the filing fee as set forth above in the "Complaint" section, and shall be required to submit the full amount of the Provider estimated administrative fees, the Threshold Review Panel fees and the Expert Panel fees at the outset of the proceedings. Fifty percent of that full amount shall be in cash (or cash equivalent) to cover the Complainant's share of the proceedings and the other 50% shall be in either cash (or cash equivalent), or in bond, to cover the registry operator's share if the registry operator prevails.
- 14.3 If the Panel declares the Complainant to be the prevailing party, the registry operator is required to reimburse Complainant for all Panel and Provider fees incurred. Failure to do so shall be deemed a violation of the Trademark PDDRP and a breach of the Registry Agreement, subject to remedies available under the Agreement up to and including termination.

#### **15. Discovery**

- 15.1 Whether and to what extent discovery is allowed is at the discretion of the Panel, whether made on the Panel's own accord, or upon request from the Parties.
- 15.2 If permitted, discovery will be limited to that for which each Party has a substantial need.
- 15.3 In extraordinary circumstances, the Provider may appoint experts to be paid for by the Parties, request live or written witness testimony, or request limited exchange of documents.
- 15.4 At the close of discovery, if permitted by the Expert Panel, the Parties will make a final evidentiary submission, the timing and sequence to be determined by the Provider in consultation with the Expert Panel.

**16. Hearings**

- 16.1 Disputes under this Procedure will be resolved without a hearing unless either party requests a hearing or the Expert Panel determines on its own initiative that one is necessary.
- 16.2 If a hearing is held, videoconferences or teleconferences should be used if at all possible. If not possible, then the Expert Panel will select a place for hearing if the Parties cannot agree.
- 16.3 Hearings should last no more than one day, except in the most extraordinary circumstances.
- 16.4 All dispute resolution proceedings will be conducted in English.

**17. Burden of Proof**

The Complainant bears the burden of proving the allegations in the Complaint; the burden must be by clear and convincing evidence.

**18. Remedies**

- 18.1 Since registrants are not a party to the action, a recommended remedy cannot take the form of deleting, transferring or suspending registrations (except to the extent registrants have been shown to be officers, directors, agents, employees, or entities under common control with a registry operator).
- 18.2 Recommended remedies will not include monetary damages or sanctions to be paid to any party other than fees awarded pursuant to section 14.
- 18.3 The Expert Panel may recommend a variety of graduated enforcement tools against the registry operator if it the Expert Panel determines that the registry operator is liable under this Trademark PDDRP, including:
  - 18.3.1 Remedial measures for the registry to employ to ensure against allowing future infringing registrations, which may be in addition to what is required under the registry agreement, except that the remedial measures shall not:
    - (a) Require the Registry Operator to monitor registrations not related to the names at issue in the PDDRP proceeding; or
    - (b) Direct actions by the registry operator that are contrary to those required under the Registry Agreement;
  - 18.3.2 Suspension of accepting new domain name registrations in the gTLD until such time as the violation(s) identified in the Determination is(are) cured or a set period of time;

OR,

18.3.3 In extraordinary circumstances where the registry operator acted with malice, providing for the termination of a Registry Agreement.

18.4 In making its recommendation of the appropriate remedy, the Expert Panel will consider the ongoing harm to the Complainant, as well as the harm the remedies will create for other, unrelated, good faith domain name registrants operating within the gTLD.

18.5 The Expert Panel may also determine whether the Complaint was filed “without merit,” and, if so, award the appropriate sanctions on a graduated scale, including:

18.5.1 Temporary bans from filing Complaints;

18.5.2 Imposition of costs of registry operator, including reasonable attorney fees; and

18.5.3 Permanent bans from filing Complaints after being banned temporarily.

18.6 Imposition of remedies shall be at the discretion of ICANN, but absent extraordinary circumstances, those remedies will be in line with the remedies recommended by the Expert Panel.

**19. The Expert Panel Determination**

19.1 The Provider and the Expert Panel will make reasonable efforts to ensure that the Expert Determination is issued within 45 days of the appointment of the Expert Panel and absent good cause, in no event later than 60 days after the appointment of the Expert Panel.

19.2 The Expert Panel will render a written Determination. The Expert Determination will state whether or not the Complaint is factually founded and provide the reasons for that Determination. The Expert Determination should be publicly available and searchable on the Provider’s web site.

19.3 The Expert Determination may further include a recommendation of specific remedies. Costs and fees to the Provider, to the extent not already paid, will be paid within thirty (30) days of the Expert Panel’s Determination.

19.4 The Expert Determination shall state which party is the prevailing party.

19.5 While the Expert Determination that a registry operator is liable under the standards of the Trademark PDDRP shall be taken into consideration, ICANN will have the authority to impose the remedies, if any, that ICANN deems appropriate given the circumstances of each matter.

**20. Appeal of Expert Determination**

- 20.1 Either party shall have a right to seek a de novo appeal of the Expert Determination of liability or recommended remedy based on the existing record within the Trademark PDDRP proceeding for a reasonable fee to cover the costs of the appeal.
- 20.2 An appeal must be filed with the Provider and served on all parties within 20 days after an Expert Determination is issued and a response to the appeal must be filed within 20 days after the appeal. Manner and calculation of service deadlines shall in consistent with those set forth in Section 4 above, "Communication and Time Limits."
- 20.3 A three-member Appeal Panel is to be selected by the Provider, but no member of the Appeal Panel shall also have been an Expert Panel member.
- 20.4 The fees for an appeal in the first instance shall be borne by the appellant.
- 20.5 A limited right to introduce new admissible evidence that is material to the Determination will be allowed upon payment of an additional fee, provided the evidence clearly pre-dates the filing of the Complaint.
- 20.6 The Appeal Panel may request at its sole discretion, further statements or evidence from any party regardless of whether the evidence pre-dates the filing of the Complaint if the Appeal Panel determines such evidence is relevant.
- 20.7 The prevailing party shall be entitled to an award of costs of appeal.
- 20.8 The Providers rules and procedures for appeals, other than those stated above, shall apply.

**21. Challenge of a Remedy**

- 21.1 ICANN shall not implement a remedy for violation of the Trademark PDDRP for at least 20 days after the issuance of an Expert Determination, providing time for an appeal to be filed.
- 21.2 If an appeal is filed, ICANN shall stay its implementation of a remedy pending resolution of the appeal.
- 21.3 If ICANN decides to implement a remedy for violation of the Trademark PDDRP, ICANN will wait ten (10) business days (as observed in the location of its principal office) after notifying the registry operator of its decision. ICANN will then implement the decision unless it has received from the registry operator during that ten (10) business-day period official documentation that the registry operator has either: (a) commenced a lawsuit against the Complainant in a court of competent jurisdiction challenging the Expert Determination of liability against the registry operator, or (b) challenged the intended remedy by initiating dispute resolution under the provisions of its Registry Agreement. If ICANN receives such documentation within the ten (10) business day period, it will not seek to implement its decision under the Trademark PDDRP until it

receives: (i) evidence of a resolution between the Complainant and the registry operator; (ii) evidence that registry operator's lawsuit against Complainant has been dismissed or withdrawn; or (iii) a copy of an order from the dispute resolution provider selected pursuant to the Registry Agreement dismissing the dispute against ICANN whether by reason of agreement of the parties or upon determination of the merits.

- 21.4 The registry operator may challenge ICANN's imposition of a remedy imposed in furtherance of an Expert Determination that the registry operator is liable under the PDDRP, to the extent a challenge is warranted, by initiating dispute resolution under the provisions of its Registry Agreement. Any arbitration shall be determined in accordance with the parties' respective rights and duties under the Registry Agreement. Neither the Expert Determination nor the decision of ICANN to implement a remedy is intended to prejudice the registry operator in any way in the determination of the arbitration dispute. Any remedy involving a termination of the Registry Agreement must be according to the terms and conditions of the termination provision of the Registry Agreement.
- 21.5 Nothing herein shall be deemed to prohibit ICANN from imposing remedies at any time and of any nature it is otherwise entitled to impose for a registry operator's non-compliance with its Registry Agreement.

## **22. Availability of Court or Other Administrative Proceedings**

- 22.1 The Trademark PDDRP is not intended as an exclusive procedure and does not preclude individuals from seeking remedies in courts of law, including, as applicable, review of an Expert Determination as to liability.
- 22.2 In those cases where a Party submits documented proof to the Provider that a Court action involving the same Parties, facts and circumstances as the Trademark PDDRP was instituted prior to the filing date of the Complaint in the Trademark PDDRP, the Provider shall suspend or terminate the Trademark PDDRP.

## REGISTRY RESTRICTIONS DISPUTE RESOLUTION PROCEDURE (RRDRP)<sup>1</sup>

~~REVISED – NOVEMBER 2010~~

15 APRIL 2011

### 1. Parties to the Dispute

The parties to the dispute will be the harmed organization or individual and the gTLD registry operator. ICANN shall not be a party.

### 2. Applicable Rules

2.1 This procedure is intended to cover these dispute resolution proceedings generally. To the extent more than one RRDRP provider (“Provider”) is selected to implement the RRDRP, each Provider may have additional rules and procedures that must be followed when filing a Complaint. The following are the general procedure to be followed by all Providers.

2.2 In any new community-based gTLD registry agreement, the registry operator shall be required to agree to participate in the RRDRP and be bound by the resulting Determinations.

### 3. Language

3.1 The language of all submissions and proceedings under the procedure will be English.

3.2 Parties may submit supporting evidence in their original language, provided and subject to the authority of the RRDRP Expert Panel to determine otherwise, that such evidence is accompanied by an English translation of all relevant text.

### 4. Communications and Time Limits

4.1 All communications with the Provider must be filed electronically.

4.2 For the purpose of determining the date of commencement of a time limit, a notice or other communication will be deemed to have been received on the day that it is transmitted to the appropriate contact person designated by the parties.

<sup>1</sup> Initial complaints ~~by those claiming that a Registry has failed to be harmed by the non-compliance of community restricted TLDs might comply with registration restrictions shall~~ be processed through a Registry Restriction Problem Report System (RRPRS) using an online form similar to the Whois Data Problem Report System (WDPRS) at InterNIC.net. A nominal processing fee could serve to decrease frivolous complaints. The registry operator ~~would~~shall receive a copy of the complaint and ~~would~~will be required to take reasonable steps to investigate (and remedy if warranted) the reported non-compliance. The Complainant ~~would~~will have the option to escalate the complaint in accordance with this RRDRP, if the alleged non-compliance continues. ~~Implementation of such an online complaint process is under investigation and consideration. Failure by the Registry to address the complaint to complainant’s satisfaction does not itself give the complainant standing to file an RRDRP complaint.~~

- 4.3 For the purpose of determining compliance with a time limit, a notice or other communication will be deemed to have been sent, made or transmitted on the day that it is dispatched.
- 4.4 For the purpose of calculating a period of time under this procedure, such period will begin to run on the day following the date of receipt of a notice or other communication.
- 4.5 All references to day limits shall be considered as calendar days unless otherwise specified.

## 5. Standing

- 5.1 The mandatory administrative proceeding will commence when a third-party complainant (“Complainant”) has filed a Complaint with a Provider asserting that the Complainant is a harmed ~~organization or individual~~ established institution as a result of the community-based gTLD registry operator not complying with the registration restrictions set out in the Registry Agreement.
- 5.2 Established institutions, ~~and individuals~~ associated with defined communities, are eligible to file a community objection. The “defined community” must be a community related to the gTLD string in the application that is the subject of the dispute. To qualify for standing for a community claim, the Complainant must prove both: it is an established institution ~~or an individual~~, and has an ongoing relationship with a defined community that consists of a restricted population that the gTLD supports.

5.3 Complainants must have filed a claim through the Registry Restriction Problem Report System (RRPRS) to have standing to file an RRDRP.

~~5.35.4~~ The Panel will determine standing and the Expert Determination will include a statement of the Complainant’s standing.

## 6. Standards

- 6.1 For an claim to be successful, the claims must prove that:
- 6.1.1 The community invoked by the objector is a defined community;
- 6.1.2 There is a strong association between the community invoked and the gTLD label or string;
- 6.1.3 The TLD operator violated the terms of the community-based restrictions in its agreement;
- 6.1.3 There is a measureable harm to the Complainant and the community named by the objector.

## 7. Complaint

7.1 Filing:

The Complaint will be filed electronically. Once the Administrative Review has been completed and the Provider deems the Complaint to be in compliance, the Provider will electronically serve the Complaint and serve a hard copy and fax notice on the registry operator consistent with the contact information listed in the Registry Agreement.

7.2 Content:

7.2.1 The name and contact information, including address, phone, and email address, of the Complainant, the registry operator and, to the best of Complainant's knowledge, the name and address of the current owner of the registration.

7.2.2 The name and contact information, including address, phone, and email address of any person authorized to act on behalf of Complainant.

7.2.3 A statement of the nature of the dispute, which must include:

7.2.3.1 The particular registration restrictions in the Registry Agreement with which the registry operator is failing to comply; and

7.2.3.2 A detailed explanation of how the registry operator's failure to comply with the identified registration restrictions has caused harm to the complainant.

7.2.4 A statement that the proceedings are not being brought for any improper purpose.

7.2.5 A statement that the Complainant has filed a claim through the RRPRS and that the RRPRS process has concluded.

7.2.6 A statement that Complainant has not filed a Trademark Post-Delegation Dispute Resolution Procedure (PDDRP) complaint relating to the same or similar facts or circumstances.

7.3 Complaints will be limited to 5,000 words and 20 pages, excluding attachments, unless the Provider determines that additional material is necessary.

7.4 Any supporting documents should be filed with the Complaint.

7.5 At the same time the Complaint is filed, the Complainant will pay a filing fee in the amount set in accordance with the applicable Provider rules. In the event that the filing fee is not paid within 10 days of the receipt of the Complaint by the Provider, the Complaint will be dismissed without prejudice to the Complainant to file another complaint.

**8. Administrative Review of the Complaint**

- 8.1 All Complaints will be reviewed within five (5) business days of submission by panelists designated by the applicable Provider to determine whether the Complainant has complied with the procedural rules.
- 8.2 If the Provider finds that the Complaint complies with procedural rules, the Complaint will be deemed filed, and the proceedings will continue. If the Provider finds that the Complaint does not comply with procedural rules, it will electronically notify the Complainant of such non-compliant compliance and provide the Complainant five (5) business days to submit an amended Complaint. If the Provider does not receive an amended Complaint within the five (5) business days provided, it will dismiss the Complaint and close the proceedings without prejudice to the Complainant's submission of a new Complaint that complies with procedural rules. Filing fees will not be refunded if the Complaint is deemed not in compliance.
- 8.3 If deemed compliant, the Provider will electronically serve the Complaint on the registry operator and serve a paper notice on the registry operator that is the subject of the Complaint consistent with the contact information listed in the Registry Agreement.

**9. Response to the Complaint**

- 9.1 The registry operator must file a response to each Complaint within thirty (30) days of service the Complaint.
- 9.2 The Response will comply with the rules for filing of a Complaint and will contain the names and contact information for the registry operator, as well as a point by point response to the statements made in the Complaint.
- 9.3 The Response must be electronically filed with the Provider and the Provider must serve it upon the Complainant in electronic form with a hard-copy notice that it has been served.
- 9.4 Service of the Response will be deemed effective, and the time will start to run for a Reply, upon electronic transmission of the Response.
- 9.5 If the registry operator believes the Complaint is without merit, it will affirmatively plead in its Response the specific grounds for the claim.
- 9.6 At the same time the Response is filed, the registry operator will pay a filing fee in the amount set in accordance with the applicable Provider rules. In the event that the filing fee is not paid within ten (10) days of the receipt of the Response by the Provider, the Response will be deemed improper and not considered in the proceedings, but the matter will proceed to Determination.

**10 Reply**

- 10.1 The Complainant is permitted ten (10) days from Service of the Response to submit a Reply addressing the statements made in the Response showing why the Complaint is not “without merit.” A Reply may not introduce new facts or evidence into the record, but shall only be used to address statements made in the Response. Any new facts or evidence introduced in a Response shall be disregarded by the Expert Panel.
- 10.2 Once the Complaint, Response and Reply (as necessary) are filed and served, a Panel will be appointed and provided with all submissions.

**11. Default**

- 11.1 If the registry operator fails to respond to the Complaint, it will be deemed to be in default.
- 11.2 Limited rights to set aside the finding of default will be established by the Provider, but in no event will it be permitted absent a showing of good cause to set aside the finding of Default.
- 11.3 The Provider shall provide Notice of Default via email to the Complainant and registry operator.
- 11.4 All Default cases shall proceed to Expert Determination on the merits.

**12. Expert Panel**

- 12.1 The Provider shall select and appoint a single-member Expert Panel within (21) days after receiving the Reply, or if no Reply is filed, within 21 days after the Reply was due to be filed .
- 12.2 The Provider will appoint a one-person Expert Panel unless any party requests a three-member Expert Panel.
- 12.3 In the case where either party requests a three-member Expert Panel, each party (or each side of the dispute if a matter has been consolidated) shall select an Expert and the two selected Experts shall select the third Expert Panel member. Such selection shall be made pursuant to the Provider’s rules or procedures. RRDRP panelists within a Provider shall be rotated to the extent feasible.
- 12.4 Expert Panel members must be independent of the parties to the post-delegation challenge. Each Provider will follow its adopted procedures for requiring such independence, including procedures for challenging and replacing an Expert for lack of independence.

**13. Costs**

- 13.1 The Provider will estimate the costs for the proceedings that it administers under this procedure in accordance with the applicable Provider Rules. Such costs will cover the

administrative fees, including the Filing and Response fee of the Provider, and ~~for~~ the Expert Panel fees, and are intended to be reasonable.

13.2 The Complainant shall be required to pay the ~~filing~~Filing fee as set forth above in the "Complaint" section, and shall be required to submit the full amount of the other Provider-~~estimated~~ administrative fees, including the Response Fee, and the Expert Panel fees at the outset of the proceedings. Fifty percent of that full amount shall be in cash (or cash equivalent) to cover the Complainant's share of the proceedings and the other 50% shall be in either cash (or cash equivalent), or in bond, to cover the registry operator's share if the registry operator prevails.

13.3 If the Panel declares the Complainant to be the prevailing party, the registry operator is required to reimburse Complainant for all Panel and Provider fees incurred, including the filing fee. Failure to do shall be deemed a violation of the RRDRP and a breach of the Registry Agreement, subject to remedies available under the Agreement up to and including termination.

13.4 If the Panel declares the registry operator to be the prevailing party, the Provider shall reimburse the registry operator for its Response fee.

#### 14. Discovery/Evidence

14.1 In order to achieve the goal of resolving disputes rapidly and at a reasonable cost, discovery will generally not be permitted. In exceptional cases, the Expert Panel may require a party to provide additional evidence.

14.2 If permitted, discovery will be limited to that for which each Party has a substantial need.

14.3 Without a specific request from the Parties, but only in extraordinary circumstances, the Expert Panel may request that the Provider appoint experts to be paid for by the Parties, request live or written witness testimony, or request limited exchange of documents.

#### 15. Hearings

15.1 Disputes under this RRDRP will usually be resolved without a hearing.

15.2 The Expert Panel may decide on its own initiative, or at the request of a party, to hold a hearing. However, the presumption is that the Expert Panel will render Determinations based on written submissions and without a hearing.

15.3 If a request for a hearing is granted, videoconferences or teleconferences should be used if at all possible. If not possible, then the Expert Panel will select a place for hearing if the parties cannot agree.

15.4 Hearings should last no more than one day, except in the most exceptional circumstances.

15.5 If the Expert Panel grants one party's request for a hearing, notwithstanding the other party's opposition, the Expert Panel is encouraged to apportion the hearing costs to the requesting party as the Expert Panel deems appropriate.

15.6 All dispute resolution proceedings will be conducted in English.

## 16. Burden of Proof

The Complainant bears the burden of proving its claim; the burden should be by a preponderance of the evidence.

## 17. Recommended Remedies

17.1 Since registrants of domain names registered in violation of the agreement restriction are not a party to the action, a recommended remedy cannot take the form of deleting, transferring or suspending registrations that were made in violation of the agreement restrictions (except to the extent registrants have been shown to be officers, directors, agents, employees, or entities under common control with a registry operator).

17.2 Recommended remedies will not include monetary damages or sanctions to be paid to any party other than fees awarded pursuant to section 13.

17.3 The Expert Panel may recommend a variety of graduated enforcement tools against the registry operator if the Expert Panel determines that the registry operator allowed registrations outside the scope of its promised limitations, including:

17.3.1 Remedial measures, which may be in addition to requirements under the registry agreement, for the registry to employ to ensure against allowing future registrations that do not comply with community-based limitations; except that the remedial measures shall not:

- (a) Require the registry operator to monitor registrations not related to the names at issue in the RRDRP proceeding, or
- (b) direct actions by the registry operator that are contrary to those required under the registry agreement

17.3.2 Suspension of accepting new domain name registrations in the gTLD until such time as the violation(s) identified in the Determination is(are) cured or a set period of time;

OR,

17.3.3 In extraordinary circumstances where the registry operator acted with malice providing for the termination of a registry agreement.

- 17.3 In making its recommendation of the appropriate remedy, the Expert Panel will consider the ongoing harm to the Complainant, as well as the harm the remedies will create for other, unrelated, good faith domain name registrants operating within the gTLD.

## 18. The Expert Determination

- 18.1 The Provider and the Expert Panel will make reasonable efforts to ensure that the Expert Determination is rendered within 45 days of the appointment of the Expert Panel and absent good cause, in no event later than 60 days after the appointment of the Expert Panel.
- 18.2 The Expert Panel will render a written Determination. The Expert Determination will state whether or not the Complaint is factually founded and provide the reasons for its Determination. The Expert Determination should be publicly available and searchable on the Provider's web site.
- 18.3 The Expert Determination may further include a recommendation of specific remedies. Costs and fees to the Provider, to the extent not already paid, will be paid within thirty (30) days of the Expert Determination.
- 18.4 The Expert Determination shall state which party is the prevailing party.
- 18.5 While the Expert Determination that a community-based restricted gTLD registry operator was not meeting its obligations to police the registration and use of domains within the applicable restrictions shall be considered, ICANN shall have the authority to impose the remedies ICANN deems appropriate, given the circumstances of each matter.

## 19. Appeal of Expert Determination

- 19.1 Either party shall have a right to seek a de novo appeal of the Expert Determination ~~of liability or recommended remedy~~ based on the existing record within the RRDRP proceeding for a reasonable fee to cover the costs of the appeal.
- 19.2 An appeal must be filed with the Provider and served on all parties within 20 days after an Expert Determination is issued and a response to the appeal must be filed within 20 days after the appeal. Manner and calculation of service deadlines shall in consistent with those set forth in Section 4 above, "Communication and Time Limits."
- 19.3 A three-member Appeal Panel is to be selected by the Provider, but no member of the Appeal Panel shall also have been an Expert Panel member.
- 19.4 The fees for an appeal in the first instance shall be borne by the appellant.
- 19.5 A limited right to introduce new admissible evidence that is material to the Determination will be allowed upon payment of an additional fee, provided the evidence clearly pre-dates the filing of the Complaint.

- 19.6 The Appeal Panel may request at its sole discretion, further statements or evidence from any party regardless of whether the evidence pre-dates the filing of the Complaint if the Appeal Panel determines such evidence is relevant.
- 19.7 The prevailing party shall be entitled to an award of costs of appeal.
- 19.8 The Providers rules and procedures for appeals, other than those stated above, shall apply.

20. **Challenge of a Remedy Breach**

~~20.1—ICANN shall not implement a remedy for violation of RRDRP for at least 20 days after the issuance of an Determination, providing time for an appeal to be filed.~~

~~20.2 If an appeal is filed, ICANN shall stay its implementation of a remedy pending resolution of the appeal.~~

~~20.3 If ICANN decides to implement a remedy for violation of the RRDRP, ICANN will wait ten (10) business days (as observed in the location of its principal office) after notifying of its decision, implement the decision unless it has received during that ten (10) business-day period official documentation the registry operator has either: (a) commenced a lawsuit against the a court of competent jurisdiction challenging the Expert Determination of liability against the registry operator, or (b) challenged the intended remedy by initiating dispute resolution under the provisions of its Registry Agreement. If ICANN receives such documentation within the ten (10) business-day period, it will not seek to implement its decision under the RRDRP until it receives: (i) evidence of a resolution between the Complainant and the registry operator; (ii) evidence that registry operator's lawsuit against Complainant has been dismissed or withdrawn; or (iii) a copy of an order from the dispute resolution provider selected pursuant to the Registry Agreement dismissing the dispute against ICANN whether by reason of agreement of the parties or upon determination of the merits.~~

~~20.4 20.1 \_\_\_\_\_ If the Expert determines that the registry operator is in breach, ICANN will then proceed to notify the registry operator that it is in breach. The registry operator may challenge ICANN's imposition of a remedy imposed will be given the opportunity to cure the breach as called for in the Registry Agreement. furtherance of an Expert Determination that the registry operator is liable under the RRDRP, to the extent a challenge is warranted, by initiating dispute resolution under the provisions of its Registry Agreement. Any arbitration shall be determined in accordance with the parties' respective rights and duties under the Registry Agreement. Neither the Expert Determination nor the decision of ICANN to implement a remedy is intended to prejudice the registry operator in any way in the determination of the arbitration dispute. Any remedy involving a termination of the Registry Agreement must be according to the terms and conditions of the termination provision of the Registry Agreement.~~

20.2 If registry operator fails to cure the breach then both parties are entitled to utilize the options available to them under the registry agreement, and ICANN may consider the recommended remedies set forth in the Expert Determination when taking action.

~~20.5~~ 20.3 Nothing herein shall be deemed to prohibit ICANN from imposing remedies at any time and of any nature it is otherwise entitled to impose for a registry operator's non-compliance with its Registry Agreement.

**21. Availability of Court or Other Administrative Proceedings**

21.1 The RRDRP is not intended as an exclusive procedure and does not preclude individuals from seeking remedies in courts of law, including, as applicable, review of an Expert Determination as to liability.

21.2 The parties are encouraged, but not required to participate in informal negotiations and/or mediation at any time throughout the dispute resolution process but the conduct of any such settlement negotiation is not, standing alone, a reason to suspend any deadline under the proceedings.



# Applicant Guidebook

## April 2011 Discussion Draft Module 6

Please note that this is a discussion draft only. Potential applicants should not rely on any of the proposed details of the new gTLD program as the program remains subject to further consultation and revision.

15 April 2011

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# Module 6

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## *Top-Level Domain Application - Terms and Conditions*

By submitting this application through ICANN's online interface for a generic Top Level Domain (gTLD) (this application), applicant (including all parent companies, subsidiaries, affiliates, agents, contractors, employees and any and all others acting on its behalf) agrees to the following terms and conditions (these terms and conditions) without modification. Applicant understands and agrees that these terms and conditions are binding on applicant and are a material part of this application.

1. Applicant warrants that the statements and representations contained in the application (including any documents submitted and oral statements made and confirmed in writing in connection with the application) are true and accurate and complete in all material respects, and that ICANN may rely on those statements and representations fully in evaluating this application. Applicant acknowledges that any material misstatement or misrepresentation (or omission of material information) may cause ICANN and the evaluators to reject the application without a refund of any fees paid by Applicant. Applicant agrees to notify ICANN in writing of any change in circumstances that would render any information provided in the application false or misleading.
2. Applicant warrants that it has the requisite organizational power and authority to make this application on behalf of applicant, and is able to make all agreements, representations, waivers, and understandings stated in these terms and conditions and to enter into the form of registry agreement as posted with these terms and conditions.
3. Applicant acknowledges and agrees that ICANN has the right to determine not to proceed with any and all applications for new gTLDs, and that there is no assurance that any additional gTLDs will be created. The decision to review and consider an application to establish one or more gTLDs is entirely at ICANN's discretion. ICANN reserves the right to

reject any application that ICANN is prohibited from considering under applicable law or policy, in which case any fees submitted in connection with such application will be returned to the applicant.

4. Applicant agrees to pay all fees that are associated with this application. These fees include the evaluation fee (which is to be paid in conjunction with the submission of this application), and any fees associated with the progress of the application to the extended evaluation stages of the review and consideration process with respect to the application, including any and all fees as may be required in conjunction with the dispute resolution process as set forth in the application. Applicant acknowledges that the initial fee due upon submission of the application is only to obtain consideration of an application. ICANN makes no assurances that an application will be approved or will result in the delegation of a gTLD proposed in an application. Applicant acknowledges that if it fails to pay fees within the designated time period at any stage of the application review and consideration process, applicant will forfeit any fees paid up to that point and the application will be cancelled. Except as expressly provided in this Application Guidebook, ICANN is not obligated to reimburse an applicant for or to return any fees paid to ICANN in connection with the application process.
5. Applicant shall indemnify, defend, and hold harmless ICANN (including its affiliates, subsidiaries, directors, officers, employees, consultants, evaluators, and agents, collectively the ICANN Affiliated Parties) from and against any and all third-party claims, damages, liabilities, costs, and expenses, including legal fees and expenses, arising out of or relating to: (a) ICANN's [or an ICANN Affiliated Party's](#) consideration of the application, and any approval or rejection of the application; and/or (b) ICANN's [or an ICANN Affiliated Party's](#) reliance on information provided by applicant in the application.
6. Applicant hereby releases ICANN and the ICANN Affiliated Parties from any and all claims by applicant that arise out of, are based upon, or are

in any way related to, any action, or failure to act, by ICANN or any ICANN Affiliated Party in connection with ICANN's [or an ICANN Affiliated Party's](#) review of this application, investigation or verification, any characterization or description of applicant or the information in this application, or the decision by ICANN to recommend, or not to recommend, the approval of applicant's gTLD application. APPLICANT AGREES NOT TO CHALLENGE, IN COURT OR IN ANY OTHER JUDICIAL FORA, ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION, AND IRREVOCABLY WAIVES ANY RIGHT TO SUE OR PROCEED IN COURT OR ANY OTHER JUDICIAL FORA ON THE BASIS OF ANY OTHER LEGAL CLAIM AGAINST ICANN AND ICANN AFFILIATED PARTIES WITH RESPECT TO THE APPLICATION. APPLICANT ACKNOWLEDGES AND ACCEPTS THAT APPLICANT'S NONENTITLEMENT TO PURSUE ANY RIGHTS, REMEDIES, OR LEGAL CLAIMS AGAINST ICANN OR THE ICANN AFFILIATED PARTIES IN COURT OR ANY OTHER JUDICIAL FORA WITH RESPECT TO THE APPLICATION SHALL MEAN THAT APPLICANT WILL FOREGO ANY RECOVERY OF ANY APPLICATION FEES, MONIES INVESTED IN BUSINESS INFRASTRUCTURE OR OTHER STARTUP COSTS AND ANY AND ALL PROFITS THAT APPLICANT MAY EXPECT TO REALIZE FROM THE OPERATION OF A REGISTRY FOR THE TLD-: [PROVIDED, THAT APPLICANT MAY UTILIZE ANY ACCOUNTABILITY MECHANISM SET FORTH IN ICANN'S BYLAWS FOR PURPOSES OF CHALLENGING ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION. APPLICANT ACKNOWLEDGES THAT ANY ICANN AFFILIATED PARTY IS AN EXPRESS THIRD PARTY BENEFICIARY OF THIS SECTION 6 AND MAY ENFORCE EACH PROVISION OF THIS SECTION 6 AGAINST APPLICANT.](#)

7. Applicant hereby authorizes ICANN to publish on ICANN's website, and to disclose or publicize in any other manner, any materials submitted to, or obtained or generated by, ICANN and the ICANN Affiliated Parties in connection with the application, including evaluations, analyses and any other materials prepared in connection with the evaluation of the application; provided, however, that information will not be disclosed or published to the extent that this Applicant Guidebook expressly

states that such information will be kept confidential, except as required by law or judicial process. Except for information afforded confidential treatment, applicant understands and acknowledges that ICANN does not and will not keep the remaining portion of the application or materials submitted with the application confidential.

8. Applicant certifies that it has obtained permission for the posting of any personally identifying information included in this application or materials submitted with this application. Applicant acknowledges that the information that ICANN posts may remain in the public domain in perpetuity, at ICANN's discretion.
9. Applicant gives ICANN permission to use applicant's name in ICANN's public announcements (including informational web pages) relating to Applicant's application and any action taken by ICANN related thereto.
10. Applicant understands and agrees that it will acquire rights in connection with a gTLD only in the event that it enters into a registry agreement with ICANN, and that applicant's rights in connection with such gTLD will be limited to those expressly stated in the registry agreement. In the event ICANN agrees to recommend the approval of the application for applicant's proposed gTLD, applicant agrees to enter into the registry agreement with ICANN in the form published in connection with the application materials. (Note: ICANN reserves the right to make reasonable updates and changes to this proposed draft agreement during the course of the application process, including as the possible result of new policies that might be adopted during the course of the application process). Applicant may not resell, assign, or transfer any of applicant's rights or obligations in connection with the application.
11. Applicant authorizes ICANN to:
  - a. Contact any person, group, or entity to request, obtain, and discuss any documentation or other information that,

- in ICANN's sole judgment, may be pertinent to the application;
- b. Consult with persons of ICANN's choosing regarding the information in the application or otherwise coming into ICANN's possession, provided, however, that ICANN will use reasonable efforts to ensure that such persons maintain the confidentiality of information in the application that this Applicant Guidebook expressly states will be kept confidential.
12. For the convenience of applicants around the world, the application materials published by ICANN in the English language have been translated into certain other languages frequently used around the world. Applicant recognizes that the English language version of the application materials (of which these terms and conditions is a part) is the version that binds the parties, that such translations are non-official interpretations and may not be relied upon as accurate in all respects, and that in the event of any conflict between the translated versions of the application materials and the English language version, the English language version controls.

**R-10**

**RESPONDENT'S EXHIBIT**



## Governmental Advisory Committee

26 May 2011

### **GAC comments on the Applicant Guidebook (April 15th, 2011 version)**

#### **Objections Procedures**

ICANN has accepted the GAC's advice that governments should not be compelled to use the "Limited Public Interest Objections" procedures in the previous version of the Guidebook. Although the ICANN Notes document indicates that ICANN has accepted the GAC's recommendation that the procedures be re-named as "Objections Procedures", the title in the revised Applicant Guidebook remains unchanged.

#### **GAC comments:**

The GAC acknowledges the Board's acceptance of the GAC's proposal, while noting the need to amend the title of the Objections Procedure in Module 3.

#### **Procedures for the review of sensitive strings**

##### ***String Evaluations and Objections Procedure:***

ICANN has accepted that governments can raise objections to proposed new gTLD strings through the GAC, as an alternative to its original proposal that its "Limited Public Interest Objections" procedures should apply to governments. GAC members can raise concerns about any applications and the GAC can provide advice to the Board on any application, with no obligation to pay fees to register an objection to a proposed string. ICANN is proposing that such GAC advice be provided by the close of the Objection Filing Period, or within a five month period after applications are posted. ICANN also expects that GAC advice will identify objecting countries, the public policy basis for the objection, and the process by which consensus was reached.

If the GAC provides consensus GAC advice that a particular application should not proceed, that will create a strong presumption for ICANN that the application should not be approved. If the GAC provides advice that does not indicate consensus, or that does not state that the application should not proceed,

such advice will be provided to the applicant but would not create the presumption that the application should be denied. If the consensus GAC advice indicates that the application should not process unless remediated, it will raise a strong presumption that the application should not proceed, unless there is a remediation method available within the Guidebook (e.g. requiring government approval). The Board may consult with independent experts, such as those designated to hear objections through the Dispute Resolution Procedure, in cases where issues raised in the GAC advice are pertinent to one of the subject matter areas of the objection procedures.

**GAC advice and comments:**

- The GAC acknowledges the Board’s efforts to date to work with the GAC to find a mutually acceptable way forward.
- The GAC advises the Board that the current text in Module 3 that seemingly dictates to the GAC how to develop consensus advice is problematic and should be deleted, as it is inconsistent with the ICANN Bylaws and the GAC’s Operating Principles.
- Nevertheless, the GAC will clarify the basis on which consensus advice is developed (e.g. the UN definition of consensus) and consider amendments to Principle 47 of its Operating Principles consistent with the ATRT recommendations.
- The GAC strongly believes that further discussions are needed between the GAC and the ICANN Board to find a mutually agreed and understandable formulation for the communication of actionable GAC consensus advice regarding proposed new gTLD strings.
- The GAC also advises the Board that it should notify the GAC when and if it determines to seek the views of independent experts on GAC advice, after which consultations between the Board and the GAC (to include any such independent experts) may be warranted.

***Expand Categories of Community-based strings, Early Warning, and Objections Fees:***

ICANN has rejected the GAC’s advice that the definition of “Community-based” strings be expanded to include strings that purport to represent a particular group of people or interests based on historical, cultural, or social components of identity, such as nationality, race or ethnicity, religion, culture, etc., or particular sectors, on the grounds that doing so would be extremely difficult to implement.

ICANN believes its acceptance that GAC objections to proposed new gTLD strings may be raised for any reason obviates the need to create new categories and expects that any GAC concerns about strings falling into these categories can be addressed through the new GAC objections procedures.

ICANN has partially accepted the GAC’s request for an “Early Warning” procedure; rather than adding a 60 day period prior to the Initial Evaluation period, ICANN is proposing to extend the Initial Evaluation period from 45 to 60 days after the new gTLD applications have been posted. “Early Warning” notices will not require GAC consensus, will be forwarded by ICANN to the applicants, and will be understood by ICANN and the applicants that the proposed string will be considered controversial or to raise national

sensitivities. Those applicants who withdraw within 21 days of receiving the notice will receive a refund of 80% of the application fee.

ICANN is proposing several models that could potentially address the GAC's advice that individual governments that choose to file objections to any "Community-based" string should not be required to pay fees, with a stated preference for the allocation of a fixed amount of funding for each individual government. ICANN will also commit that at least one objection will be fully funded for each individual government. The Explanatory Memorandum on the GAC Objection Procedures clearly states ICANN's view that governments must budget for dispute resolution fees if they anticipate the need to object to applications using the "Community-based" strings objection procedures.

ICANN has accepted the GAC's advice that the requirement that objectors must demonstrate "material detriment to the broader Internet community" be amended to reflect material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted.

**GAC advice and comments:**

- The GAC appreciates the Board's acceptance of the GAC's advice that the requirement to demonstrate "material detriment to the broader Internet community" was impractical and has now been revised accordingly.
- The GAC will consider whether the addition of 15, vice 60, days to the 45 day Initial Evaluation period for the GAC's Early Warning Procedure provides sufficient time for governments to review the list of proposed new gTLD strings, undertake appropriate consultations in national capitals, and then subsequently notify the GAC of an intention to submit an Early Warning notice to the GAC. The GAC advises the Board that it will need to develop a methodology or mechanism for this new GAC Early Warning Procedure (e.g. members to notify the GAC and the GAC, in turn, to notify ICANN).
- While the GAC appreciates the Board's acceptance that Early Warning notices may cite national, geographic, cultural, linguistic, religious, ethnic and/or other reasons (e.g. the string represents a regulated sector) as the basis for the Early Warning notice, the GAC notes that such notices are apparently only relevant in the event there is a remedy available in the Guidebook itself (which appear to be restricted to geographic names).
- The GAC cannot determine whether the Board's commitment to fund at least one objection per individual national government will be sufficient, in view of the as-yet- unknown number of new gTLD strings that may be considered controversial, objectionable, or to raise national sensitivities. The GAC therefore advises the Board that its Communication Outreach program should specifically identify the options available to governments to raise objections to any proposed string.

## **Root Zone Scaling**

ICANN has accepted GAC's advice on this topic and plans to implement the advice in the following manner:

- ICANN will establish a process for reporting root zone metrics.
- ICANN will implement a process with a clearly established chain of command that enables the delegation of TLDs to be slowed or stopped in the event that there is a strain on the root zone system.
- ICANN commits to review the effects of the new gTLD program on the operations of the root zone system, and to postpone delegations in a second round until it is determined that the delegations in the first round have not jeopardized the root zone system's security or stability (as stated in the AG).
- ICANN has drafted a preliminary paper describing monitoring root zone stability, including a hold on new delegations after the first round until stability is tested and assured. The proposed annex with the plan to monitor root zone performance is not yet available.
- ICANN commits to ensuring that the operation of the IANA functions and ICANN's coordination of the root zone system will not be negatively affected. The paper on Root Zone Scaling (see above) describes staffing plans to ensure ongoing day-to-day operations at ICANN. These operations include delegation, re-delegation, root zone changes, contractual compliance and registry liaison. The GAC notes, however, that these calculations of manpower resource requirements are not yet part of the ICANN operational plan. ICANN will continue to test these assumptions in order to create and execute an operating plan that addresses these requirements.
- ICANN's planning routinely takes into account non-English speaking and different legal environments. It will ensure that planning is included for handling new gTLDs.

The GAC looks forward to the final implementation of GAC advice and to the publication by ICANN of a single authoritative document describing the monitoring system and reporting mechanisms. This document should be ready before the launch of the new gTLD program.

## **Market and Economic Impacts**

ICANN has accepted the GAC's revised advice that criteria should be identified to facilitate the weighing of the potential costs and benefits to the public in the evaluation and award of new gTLDs, as part of the new gTLD program review specified in the Affirmation of Commitments.

ICANN has also accepted the GAC's advice that applicants be required to provide information on the expected benefits of the proposed gTLD, as well as information and proposed operating terms to eliminate or minimize costs to registrants and consumers. In this regard, ICANN consulted with economists who have developed proposed questions for inclusion in the Applicant Guidebook.

With regard to the GAC's advice that due diligence or other operating restrictions be developed to ensure that Community-based gTLDs will in fact serve their targeted community, ICANN has provided a briefing paper to the Generic Names Supporting Organization (GNSO), with a request that the GNSO consider a proposed procedure for determining under which circumstances a community TLD registry may amend the registration restriction in the registry agreement.

**GAC advice and comments:**

- The GAC recognizes the Board's responsiveness to the GAC's advice in including specific questions for applicants, as well as requiring applicants to provide information on the expected benefits of the new gTLD.
- The GAC requests information from the Board regarding how the GAC's concerns can be effectively taken into account in the course of the GNSO's deliberations of a new procedure for determining the circumstances under which a Community TLD registry may (or may be required to) amend its registration policies.

**Registry-Registrar separation**

Since the recent exchanges in San Francisco on the GAC's request that the Board provide additional background on its decision to relax registry-registrar cross-ownership rules in relation to new gTLDs, ICANN has also re-confirmed that it also intends to relax existing provisions in relation to existing gTLDs. This raises additional and related considerations for GAC members to discuss with their competition authorities. These discussions are ongoing and ICANN will be informed in due course if there are concerns that competition authorities wish to discuss with ICANN.

It is hoped that at least an initial reaction will be available before or during the next GAC-Board interaction in Singapore.

**Rights Protection Mechanisms**

The rights protection mechanisms in the Applicant Guidebook constitute an important set of initiatives aimed in particular at mitigating the negative impact on the business community arising from the potential substantial and rapid escalation in the incidence of cybersquatting due to the scaling up of the number of gTLDs. The GAC appreciates the Board's commitment to achieving the shared overarching objective of examining a) how these mechanisms can be enhanced in order to maximize the level of rights protection afforded to businesses big and small; and b) ensuring the burden for business stakeholders when using these mechanisms is minimized.

As a result of the several constructive Board/GAC consultations, a number of the GAC's specific proposals which were formulated with the assistance of national policy experts and were drawn on national consultations with stakeholders, have been accepted. The GAC welcomes the substantial progress in this important area.

There remain, however, five significant GAC proposals in the GAC's advice where the Board and the GAC to date have been unable to reach agreement, namely:

- i. The IP claims and sunrise services should include exact matches plus key terms associated with the goods or services identified by the mark, and typographical variations identified by the rights holder.
- ii. The notification function of the Trademark Clearinghouse should continue beyond the currently proposed 60 day period after the initial launch of each gTLD.
- iii. There should be no requirement to provide evidence of use for eligibility to be included in the Clearinghouse which would conflict with many national IP legal frameworks.
- iv. The standard of proof required for the URS and the PDDRP should be reduced from "clear and convincing evidence" to the less burdensome "preponderance of evidence".
- v. The loser pays threshold should be substantially reduced to less than 26 domain names.

**How can the Board and the GAC move forward together on the remaining substantial operational proposals submitted by the GAC for improving the rights protection mechanisms?**

Throughout the discussions between the Board and the GAC, there was ready acceptance of the fact that the Clearinghouse is an innovative and untested initiative, the resourcing and commissioning of which has yet to be determined with any certainty. There is an element of experiment in its eventual operation which doubtless will create further questions and issues related to its scope and efficient operation.

In considering how to progress the GAC proposals (i), (ii) and (iii) above, the GAC now proposes that a comprehensive post-launch independent review of the Clearinghouse be conducted one year after the launch of the 75th new gTLD in the round. The GAC advises that this review should examine whether the aims, functionality and operation of the Clearinghouse would benefit from incorporating the current GAC proposals as well as any unforeseen questions and issues that may arise following the launch of the round. The GAC advises that the following specific questions should be included in the review's terms of reference.

1. With regard to the issue of non-exact matches (i), the GAC notes that the Board's principal argument against acceptance of the GAC's advice is that the automation of the TM Claims and sunrise services would not allow the inclusion of non-exact matches. The GAC therefore recommends that the request for proposal (RFP) that ICANN will issue to potential Clearinghouse providers includes a requirement that the candidate assess whether domain names that include a mark at the beginning or the end of an applied for second level domain could be included in the services. Secondly, the GAC advises the Board to direct the post-launch review to establish whether the automated system should be enhanced to include key terms associated with the goods or services identified by the mark, and typographical variations identified by the rights holder.
2. In the light of the experience gained from the initial period of the operation of the Clearinghouse, in relation to the GAC's advice on extending the operation of the Clearinghouse beyond 60 days after each gTLD launch (ii), the GAC advises that the review should include:

- a) a consultation with registry providers, registrants and rights holders on the benefits or otherwise of extending the period of the Clearinghouse notifications beyond 60 days;
- b) an analysis of the impact of the operation of the Clearinghouse notifications on the commercial watch services market;
- c) an assessment of the likely resource requirements for extending the operation of the Clearinghouse notifications to potential registrants for the life of each new registry.

The GAC maintains its advice to the Board that the requirement to provide evidence of use (iii) should be removed because it is inconsistent with trade mark law in many jurisdictions, burdensome for business, disproportionate and discriminatory. The GAC notes that the principal reason the Board disagrees with the GAC's advice is that this requirement would in its view deter gaming. In view of the Board's concern about this as an overriding risk that outweighs the concerns raised by the GAC if this requirement were to be imposed, the GAC asks the Board to provide a written document for the GAC's consideration by 8 June 2011, so that there is opportunity for GAC review before meeting in Singapore, which:

- a) provides a detailed, evidence-supported analysis of the gaming threat at the second level;
- b) explains why the Board believes that this requirement is the only practicable solution for addressing this threat and would successfully deter the practice of gaming;
- c) provides an analysis of the likely impact of this requirement on legitimate mark holders who would be rendered ineligible for inclusion in the Clearinghouse if this requirement is imposed;
- d) assesses the costs to business of having to furnish evidence of proof;
- e) explains the resources which ICANN will expect to be deployed by the Clearinghouse for the rigorous examination of evidence of use.

The GAC requests a discussion of this paper with the Board at the meeting in Singapore before finalising its advice to the Board on the proposal to require evidence of proof.

The GAC's advice to the Board that it reduce the burden of proof to the standard usual applicable to civil law (iv) is unchanged on the grounds that the GAC believes that this would constitute a significant reduction in the burden on business without compromising the effectiveness of the URS and the PDDRP.

The GAC maintains its advice that the threshold for the loser pays mechanism should be lowered (v), a position which the GAC notes is shared by the IP, Business and Not-for Profit Operation Concerns Constituencies, as well as the US Council for International Business, the International Trademark Association, the European Brands Association and a number of other leading business respondents to the recent public consultations.

Furthermore, the Board indicated in its most recent consultation with the GAC that the current threshold proposal of 26 derives from a very formative proposal and has not been rigorously assessed recently as to its suitability for purpose. The GAC hereby amends its position to advise a) that the threshold should be re-set at 15 domain names and b) that the effectiveness of this threshold be reviewed at the same time as the post-launch review of the Clearinghouse.

The GAC also has a number of outstanding specific text proposals for amending the Applicant Guidebook which are listed at Annex A for the Board's present consideration.

Following the clarification provided by the Board during the Board-GAC consultation on 20 May regarding URS Default cases, the GAC accepts the Board's response that "de novo" reviews should be retained in para. 6.4 of the Applicant Guidebook. The GAC welcomes the Board's proposal for reducing the period for filing a response to 6 months with a possible extension of 6 months, primarily in order to ensure that small businesses with limited resources are allowed sufficient to be alerted to the opportunity to submit an appeal.

(See Annex A: Rights Protection – GAC clarification requests and proposed text amendments. Page 13)

### **The Reserved Names List**

Following the GAC's exchange with the Board on 20 May regarding the requests from the International Olympic Committee (IOC) and the International Red Cross and Red Crescent Movement for the key words most directly associated with their respective Charters and unique humanitarian missions to be added to the Reserved Names list, the GAC emphasizes that it would not support the extension of the reserved list into a de facto "Globally Protected Marks List" (GPML). In fully supporting these two specific requests, the GAC recognizes that they are made by two global, non-profit, humanitarian organizations whose property is protected by special legislation in many countries, in the IOC's case over thirty nations representing over 4.5 billion people which is approximately sixty-five percent of the world's population. The GAC supports ICANN's continued application of very tightly drawn criteria for inclusion on the reserved names list and the GAC is unaware of any other international non-profit organization that enjoys the level of special legislative protection across the world afforded to the IOC and the Red Cross and Red Crescent movement that justifies inclusion on the Reserved Names List.

### **Consumer Protection and Law Enforcement proposals**

ICANN has accepted the intent behind the GAC's advice that the provision in the Registry Agreement requiring an Abuse Point of Contact should explicitly refer to government agencies that are conducting lawful investigations or official proceedings, while rejecting the GAC's proposed language. The ICANN Notes indicate that ICANN has amended the provision in the Registry Agreement in more general lines; however, the text in the Applicant Guidebook itself does not appear to have been amended.

The GAC's amended advice that ICANN conduct more stringent vetting of all new gTLD applicants has been largely accepted by ICANN, which has committed to expanding the scope of background screening and to publishing the names and titles of key officers, directors, partners and controlling shareholders of each applicant.

ICANN has accepted the GAC's advice that it enhance its Contract Compliance resources prior to the launch of the new gTLD program, and expects to issue an Explanatory Memorandum on the subject pending the results of internal analyses.

#### **GAC advice and comments:**

- The GAC appreciates the Board's acceptance of its proposal that the Registry Abuse Point of Contact must be responsive to requests from law enforcement and government consumer protection

agencies that are conducting lawful investigations and requests that ICANN confirm that the text has been amended accordingly.

- The GAC also appreciates the Board's agreement that the scope of background screening should be broadened, and commits to providing support from its respective law enforcement agencies to assist ICANN in selecting a background screening service provider.
- The GAC also notes that the categories of crimes that will be included in the screening process (as per 11.1 in the Scorecard) must be broadened to include consumer protection violations.
- The GAC welcomes ICANN's intention to enhance its Contract Compliance efforts and urges the Board to ensure that this effort coincides with the implementation of the new gTLD program.

### **Law Enforcement proposals**

ICANN has largely accepted all of the GAC's advice pertaining to law enforcement concerns regarding increased due diligence, and has noted that it will respond separately to the GAC's request for information on how the Board intends to implement the LEA Recommendations for further amendments to the Registrar Accreditation Agreement that were endorsed by the GAC in June 2010 (as an issue unrelated to new gTLDs). While ICANN has not accepted the GAC's advice that applicants offering the highest levels of security should be assigned higher weights in the evaluation process, ICANN has agreed to include specific questions in the applicant questionnaire that are intended to identify the security measures, including abuse mitigation, the applicant intends to implement.

### **GAC advice and comments:**

- The GAC appreciates the Board's responsiveness to the majority of the points included in the GAC's advice regarding law enforcement concerns.
- The GAC believes that the categories of law violations that will be considered in the background screening process must be broadened to include court or administrative orders for consumer protection law violations. If an applicant has been subject to a civil court or administrative order for defrauding consumers, it should not be permitted to operate a new gTLD. While the GAC understands that there is no agreed international standard related to deceptive commercial practices, the OECD Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders contains a definition of fraudulent and deceptive commercial practices that is based on global consensus that can be incorporated into the background screening process.

(Link to the OECD Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders:

[http://www.oecd.org/document/56/0,3746,en\\_2649\\_34267\\_2515000\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/56/0,3746,en_2649_34267_2515000_1_1_1_1,00.html) )

- The GAC also urges the Board to reconsider the deletion (in Section 1.2.1) of the phrase “include, but not limited to” with regard to a list of offenses that would automatically disqualify an applicant. The new text has the unintended consequence that applicants would be disqualified only on enumerated offenses, and removes the flexibility and discretion the previous text provided the Board to inquire into additional law violations other than those enumerated in the Applicant Guidebook.

### **Post Delegation Disputes**

ICANN has accepted the GAC’s main principle, that Governments will be able to withdraw government support for an application in case of a dispute with the registry. Support will in most cases be given with a set of conditions: ICANN has now written in the Applicant guidebook that they will comply with a legally binding order from a court in the jurisdiction of the government or public authority that has given support to an application. This obligation is also included in the draft registry agreement in article 7.13.

#### **GAC advice and comments:**

The GAC is therefore pleased that ICANN has reinstated this principle in the Applicant Guidebook.

According to the GACs previous input, the GAC also want ICANN to respect a legally binding administrative decision. The reason for this is that in some jurisdictions it is not possible for the Government or Public Authority to have their administrative decision confirmed by a court. Only the other party (i.e. the applicant) can take the decision of the Government or Public Authority to court.

If ICANN will not include the obligation to comply with a legally binding administrative decision in the Applicant Guidebook, you will have a situation where some Governments or Public Authorities will not have the possibility to give a letter of support or non-objection. In those cases, ICANN must be willing to comply with a legally binding administrative decision made by the Government or Public Authority which provided the initial letter of support or non-objection. This commitment from ICANN should be included in the final version of the Applicant Guidebook, or at least ICANN should signal that they are willing to accept this as an amendment in the registry agreement on a case-by-case basis.

### **Geographic names**

#### **GAC advice and comments:**

ICANN has partially accepted the GAC request for implementation of a free of charge objection mechanism, providing limited financial support for objections. The GAC cannot determine whether the Board’s commitment to fund at least one objection per individual national government will be sufficient, in view of the as-yet-unknown number of new gTLD strings that may be considered controversial, objectionable, or raising national sensitivities. The GAC therefore advises the Board that its

Communications Outreach program should specifically identify the options available to governments to raise objections to any proposed string.

Given ICANN's clarifications on "Early Warning" and "GAC Advice" that allow the GAC to require governmental support/non-objection for strings it considers to be geographical names, the GAC accepts ICANN's interpretation with regard to the definition of geographic names.

The GAC appreciates the language that has been added to the Applicant Guidebook augmenting the definition of geographic names such that: "A string shall be considered to be a country or territory name if: ... it is a name by which a country is commonly known, as demonstrated by evidence that the country is recognized by that name by an intergovernmental or treaty organization."

The GAC believes that the potential risk of applicants avoiding the government support requirement is resolved with the Early Warning Process and GAC Advice procedures.

The GAC appreciates the Board's observation that requiring applicants to describe the purpose of their TLD applications will provide useful information for evaluation and objections; and, importantly, for the GAC as it considers the public policy implications of the application and string. The GAC observes that GAC's advice allows for requests for such statements if public policy issues are raised.

The GAC appreciates the Board's clarifications that a) the level of government and which administrative agency is responsible for the provision of letters of support or non-objection is a matter for each national administration to determine; and b) ICANN intends to allow multiple applicants all endorsed by the same authority to go forward, when requested by the government.

### **Legal recourse for Applications**

ICANN has examined these legal questions carefully and, considering the results of these examinations, still adheres to this provision.

ICANN clarified in the Applicant Guidebook that if ICANN deviates from its agreed processes in coming to a decision, ICANN's internal accountability mechanisms will allow complaints to be heard.

### **GAC comments:**

The GAC appreciates and accepts the Board clarifications.

**Support for developing countries and needy applicants**

The GAC commends the JAS working group on the second milestone report, which contains very innovative proposals and the efforts to accommodate GAC's concerns and proposals.

**GAC advice and comments**

- The GAC urges the Board to coordinate and implement as a matter of urgency the decisions relating to the process and timeline issues on the support programme in order to provide equal opportunities to all applicants, particularly from developing countries.
- For support to developing countries, the GAC is asking for a fee waiver, which corresponds to 76 percent of the US\$ 185,000 application fee requirement. Further, there will be instances where additional costs will be required: for example, for auction, objections, and extended evaluation. In such events, the GAC proposes fee reduction and waivers in these processes/instances where additional costs are required. The GAC would further like to propose an additional waiver of the annual US\$ 25,000 fee during the first 3 years of operation.
- There is also a need for consideration of a sustainable process for implementing the waiver programme. The GAC welcomes the proposal for further discussions on this during the meeting in Singapore to help develop a number of the very innovative approaches proposed to enable fair access to all applicants who meet the conditions set by the JAS WG.
- On gaming, the GAC welcomes the JAS WG's recommendation to set up a parallel process to determine eligibility based on the guidelines they have provided. The GAC proposes that a review team be established consisting of ICANN stakeholders experienced and knowledgeable in gTLD processes, developing country needs and gaming patterns. Furthermore, consideration should be given to the imposition of penalties on entities found to be attempting to game processes put in place to support developing country applicants.

**Rights Protection – GAC clarification requests and proposed text amendments**Trademark Clearinghouse

## i) Para 6.1.1

The GAC seeks clarification that the date of 26.6.08 refers only to the date of the protective treaty/statute being in force, and does not refer to date of validation by the court as suggested in ICANN's revised notes (see para 6.1.1, (a)(ii))

The GAC seeks clarification of the differences in approach regarding the date of statutes/treaty. Whereas the date of 26.6.08 is included in requirements for sunrise (see para 7.2) but not for inclusion in the Clearinghouse (see para 3.2.3). The practical implications for this are unclear.

## ii) Para 6.1.4

The GAC advises that the word "promptly" be added as follows:  
"....the Clearinghouse will promptly notify the mark holder(s)...."

## iii) Paras 7.1 and 7.2

The GAC advises that the text be amended to read 'nationally or regionally' in place of 'nationally or multi-nationally.'

Uniform Rapid Suspension

## iv) Para 8.4 (2)

The GAC seeks clarification as to why this text has not been deleted. The substantive or practical difference between para. 8.4 (1) and para 8.4 (2) is unclear as the latter appears to fall within 8.4(1).

Post Delegation Dispute Resolution Procedure

## v) Para 6.1

The GAC advises that the word "affirmative" be deleted.

R-11

RESPONDENT'S EXHIBIT

# gTLD Applicant Guidebook

(30 May 2011)

Potential applicants should be aware that this version of the Guidebook is for consideration and not yet approved. The proposed details of the New gTLD Program remain subject to further consultation and revision.



30 May 2011



## The Internet Corporation for Assigned Names and Numbers

30 May 2011

Dear Prospective Applicant,

Thank you for your interest in the New Generic Top-Level Domain Program. This landmark program has the potential to create more choice for Internet users, empower innovation, stimulate economic activity and generate new business opportunities around the world. The program seeks to introduce new gTLDs while providing new protections for rights holders and Internet users, creating a safer online environment.

Since ICANN's creation in 1998, the domain name space has only expanded to 22 generic top-level domains. Today we are preparing to launch a program that will mark a new phase of diversity in languages, participants, and business models on the Internet.

Throughout this process, I have been struck by the amount of time and effort our stakeholders have devoted to improving the New gTLD Program. Your insightful, thoughtful and provocative comments have shaped every aspect of this program, which in turn will shape the future of the Internet.

In keeping with our established timeline, the *Applicant Guidebook* has been updated in advance of the special Board of Directors meeting to be held on Monday, 20 June 2011. This draft is based on public comments received in the last four weeks from a wide range of stakeholders. It also reflects the productive and ongoing dialogue between the Governmental Advisory Committee (GAC) and the Board, which has resulted in refinements to trademark and consumer protections. In parallel, the GAC and Board have engaged in important discussions on a process for providing assistance to potential applicants from developing countries.

ICANN works toward the common good of providing a stable, secure and unified global Internet. In performing its core function of overseeing the Internet's unique identifier systems, it also promotes competition and consumer choice. New gTLDs are in line with those goals, and I thank you for your support.

Respectfully,

Rod Beckstrom  
President and CEO

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# Preamble

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## *New gTLD Program Background*

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

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

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

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

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



# Applicant Guidebook

(30 May 2011)

Module 1

Potential applicants should be aware that this version of the Guidebook is for consideration and not yet approved. The proposed details of the New gTLD Program remain subject to further consultation and revision.

30 May 2011

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# Module 1

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## *Introduction to the gTLD Application Process*

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

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

A glossary of relevant terms is included at the end of this Applicant Guidebook.

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

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

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

### *1.1 Application Life Cycle and Timelines*

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

### *1.1.1 Application Submission Dates*

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The user registration and application submission periods open at [time] UTC [date].<sup>1</sup>

The user registration period closes at ([time] UTC [date]).

The application submission period closes at [time] UTC [date].

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

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

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

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

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

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<sup>1</sup> Information for all time and date references will be inserted following approval of this Applicant Guidebook by the ICANN Board of Directors.

### 1.1.2 Application Processing Stages

This subsection provides an overview of the stages involved in processing an application submitted to ICANN. Figure 1-1 provides a simplified depiction of the process. The shortest and most straightforward path is marked with bold lines, while certain stages that may or may not be applicable in any given case are also shown. A brief description of each stage follows.

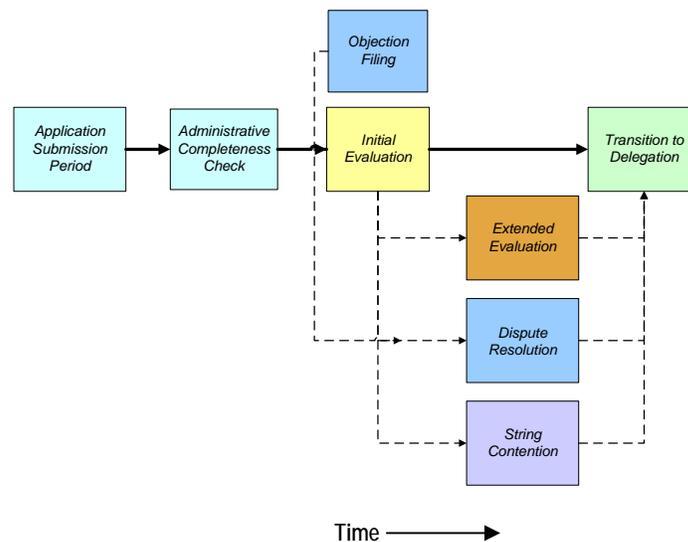


Figure 1-1 – Once submitted to ICANN, applications will pass through multiple stages of processing.

#### 1.1.2.1 Application Submission Period

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

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

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

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

The application submission period is expected to last for 60 days. Following the close of the application submission period, ICANN will provide applicants with periodic status updates on the progress of their applications.

#### *1.1.2.2 Administrative Completeness Check*

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

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

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

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

#### *1.1.2.3 Comment Period*

Public comment mechanisms are part of ICANN's policy development, implementation, and operational processes. As a private-public partnership, ICANN is dedicated to: preserving the operational security and stability of the Internet, promoting competition, achieving broad

representation of global Internet communities, and developing policy appropriate to its mission through bottom-up, consensus-based processes. This necessarily involves the participation of many stakeholder groups in a public discussion.

ICANN will open a comment period at the time applications are publicly posted on ICANN's website (refer to subsection 1.1.2.2). This period will allow time for the community to review and submit comments on posted application materials (referred to as "application comments.") The comment forum will require commenters to associate comments with specific applications and the relevant panel. Comments received within a 60-day period from the posting of the application materials will be available to the evaluation panels performing the Initial Evaluation reviews. This period is subject to extension, should the volume of applications or other circumstances require. **To be considered by evaluators, comments must be received in the designated comment forum within the stated time period.**

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

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

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

***Comments and the Formal Objection Process:*** A distinction should be made between application comments, which may be relevant to ICANN's task of determining whether applications meet the established criteria, and formal

objections that concern matters outside those evaluation criteria. The formal objection process was created to allow a full and fair consideration of objections based on certain limited grounds outside ICANN's evaluation of applications on their merits (see subsection 3.2).

Public comments will not be considered as formal objections. Comments on matters associated with formal objections will not be considered by panels during Initial Evaluation. These comments will be available to and may be subsequently considered by an expert panel during a dispute resolution proceeding (see subsection 1.1.2.9). However, in general, application comments have a very limited role in the dispute resolution process.

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

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

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

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

#### ***1.1.2.4 GAC Early Warning***

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

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

A GAC Early Warning typically results from a notice to the GAC by one or more governments that an application might be problematic, e.g., potentially violate national law or raise sensitivities. A GAC Early Warning may be issued for any reason.<sup>2</sup> The GAC may then send that notice to the Board – constituting the GAC Early Warning. ICANN will notify applicants of GAC Early Warnings as soon as practicable after receipt from the GAC

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

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

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

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<sup>2</sup> While definitive guidance has not been issued, the GAC has indicated that strings that could raise sensitivities include those that "purport to represent or that embody a particular group of people or interests based on historical, cultural, or social components of identity, such as nationality, race or ethnicity, religion, belief, culture or particular social origin or group, political opinion, membership of a national minority, disability, age, and/or a language or linguistic group (non-exhaustive)" and "those strings that refer to particular sectors, such as those subject to national regulation (such as .bank, .pharmacy) or those that describe or are targeted to a population or industry that is vulnerable to online fraud or abuse."

### 1.1.2.5 Initial Evaluation

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

There are two main elements of the Initial Evaluation:

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

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

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

A process external to the application submission process will be employed to establish evaluation priority. This process will be based on an online ticketing system or other objective criteria.

If batching is required, the String Similarity review will be completed on all applications prior to the establishment of evaluation priority batches. For applications identified as

part of a contention set, the entire contention set will be kept together in the same batch.

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

Note that the processing constraints will limit delegation rates to a steady state even in the event of an extremely high volume of applications. The annual delegation rate will not exceed 1,000 per year in any case, no matter how many applications are received.<sup>3</sup>

#### *1.1.2.6 Objection Filing*

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

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

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

Applicants are encouraged to identify possible regional, cultural, property interests, or other sensitivities regarding TLD strings and their uses before applying and, where possible, consult with interested parties to mitigate any concerns in advance.

#### *1.1.2.7 Receipt of GAC Advice on New gTLDs*

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<sup>3</sup> See "Delegation Rate Scenarios for New gTLDs" at <http://icann.org/en/topics/new-gtlds/delegation-rate-scenarios-new-gtlds-06oct10-en.pdf> for additional discussion.

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

GAC Advice on New gTLDs that includes a consensus statement<sup>4</sup> from the GAC that an application should not proceed as submitted (or other terms created by the GAC to express that intent), and that includes a thorough explanation of the public policy basis for such advice, will create a strong presumption for the Board that the application should not be approved. If the Board does not act in accordance with this type of advice, it must provide rationale for doing so.

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

#### ***1.1.2.8 Extended Evaluation***

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

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

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

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

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<sup>4</sup> The GAC will clarify the basis on which consensus advice is developed.

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

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

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

### **1.1.2.9 Dispute Resolution**

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

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

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

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

### 1.1.2.10 String Contention

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

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

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

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

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

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

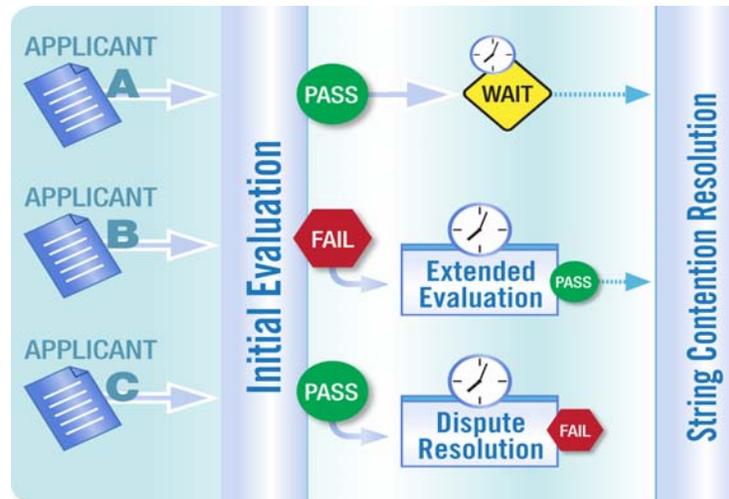


Figure 1-2 – All applications in a contention set must complete all previous evaluation and dispute resolution stages before string contention resolution can begin.

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

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

#### 1.1.2.11 Transition to Delegation

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

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

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

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

**1.1.3 Lifecycle Timelines**

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

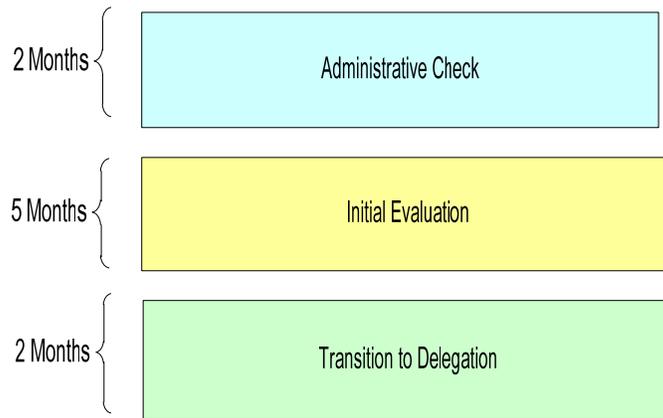


Figure 1-3 – A straightforward application could have an approximate 9-month lifecycle.

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

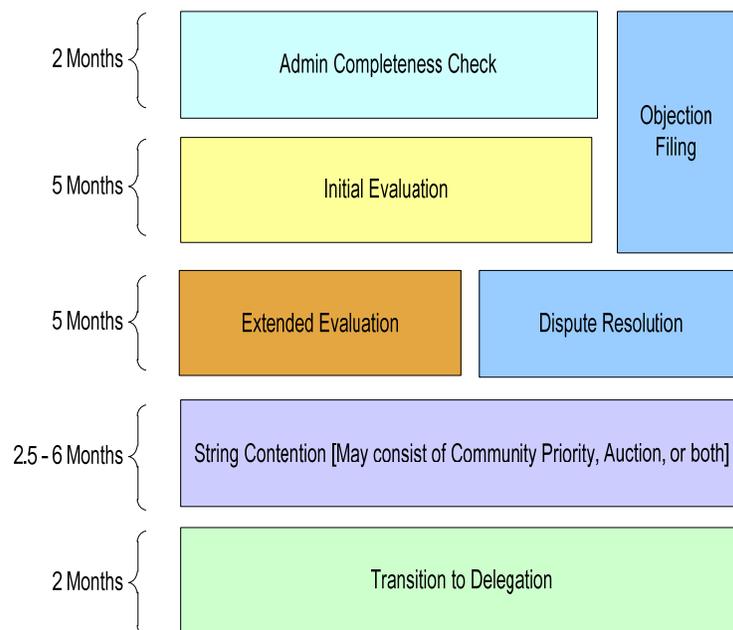


Figure 1-4 – A complex application could have an approximate 20-month lifecycle.

### 1.1.4 Posting Periods

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

Period	Posting Content
During Administrative Completeness Check	Public portions of all applications (posted within 2 weeks of the start of the Administrative Completeness Check).
End of Administrative Completeness Check	Results of Administrative Completeness Check.
GAC Early Warning Period	GAC Early Warnings received.
During Initial Evaluation	Status updates for applications withdrawn or ineligible for further review. Contention sets resulting from String Similarity review.
End of Initial Evaluation	Application status updates with all Initial Evaluation results.
GAC Advice on New gTLDs	GAC Advice received.
End of Extended Evaluation	Application status updates with all Extended Evaluation results. Evaluation summary reports from the Initial and Extended Evaluation periods.
During Objection	Information on filed objections and status

Period	Posting Content
Filing/Dispute Resolution	updates available via Dispute Resolution Service Provider websites. Notice of all objections posted by ICANN after close of objection filing period.
During Contention Resolution (Community Priority Evaluation)	Results of each Community Priority Evaluation posted as completed.
During Contention Resolution (Auction)	Results from each auction posted as completed.
Transition to Delegation	Registry Agreements posted when executed. Pre-delegation testing status updated.

### 1.1.5 Sample Application Scenarios

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

Estimated time frames for each scenario are also included, based on current knowledge. Actual time frames may vary depending on several factors, including the total number of applications received by ICANN during the application submission period. It should be emphasized that most applications are expected to pass through the process in the shortest period of time, i.e., they will not go through extended evaluation, dispute resolution, or string contention resolution processes. Although most of the scenarios below are for processes extending beyond nine months, it is expected that most applications will complete the process within the nine-month timeframe.

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

Scenario Number	Initial Evaluation	Extended Evaluation	Objection(s) Filed	String Contention	Approved for Delegation Steps	Estimated Elapsed Time
7	Fail	Fail	N/A	N/A	No	12 months
8	Fail	Pass	Applicant prevails	Yes	Yes	16.5 – 20 months
9	Fail	Pass	Applicant prevails	Yes	No	14.5 – 18 months

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

**Scenario 2 – Extended Evaluation, No Objection, No Contention** – In this case, the application fails one or more aspects of the Initial Evaluation. The applicant is eligible for and requests an Extended Evaluation for the appropriate elements. Here, the application passes the Extended Evaluation. As with Scenario 1, no objections are filed during the objection period, so there is no dispute to resolve. As there is no contention for the gTLD string, the applicant can enter into a registry agreement and the application can proceed toward delegation of the applied-for gTLD.

**Scenario 3 – Pass Initial Evaluation, No Objection, Contention** – In this case, the application passes the Initial Evaluation so there is no need for Extended Evaluation. No objections are filed during the objection period, so there is no dispute to resolve. However, there are other applications for the same or a similar gTLD string, so there is contention. In this case, the application prevails in the contention resolution, so the applicant can enter into a registry agreement and the application can proceed toward delegation of the applied-for gTLD.

**Scenario 4 – Pass Initial Evaluation, Win Objection, No Contention** – In this case, the application passes the Initial Evaluation so there is no need for Extended Evaluation. During the objection filing period, an objection is filed on one of the four enumerated grounds by an objector with

standing (refer to Module 3, Objection Procedures). The objection is heard by a dispute resolution service provider panel that finds in favor of the applicant. The applicant can enter into a registry agreement and the application can proceed toward delegation of the applied-for gTLD.

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

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

**Scenario 7 – Fail Initial Evaluation, Fail Extended Evaluation** -- In this case, the application fails one or more aspects of the Initial Evaluation. The applicant requests Extended Evaluation for the appropriate elements. However, the application fails Extended Evaluation also. The application does not proceed.

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

**Scenario 9 – Extended Evaluation, Objection, Fail Contention** – In this case, the application fails one or more aspects of the Initial Evaluation. The applicant is eligible for and requests an Extended Evaluation for the appropriate

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

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

### ***1.1.6 Subsequent Application Rounds***

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

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

## ***1.2 Information for All Applicants***

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### ***1.2.1 Eligibility***

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

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

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

Background screening at both the entity level and the individual level will be conducted for all applications to confirm eligibility. This inquiry is conducted on the basis of the information provided in questions 1-11 of the application form. ICANN may take into account information received from any source if it is relevant to the criteria in this section.

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

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

- a. within the past ten years, has been convicted of any crime related to financial or corporate governance activities, or has been judged by a court to have committed fraud or breach of fiduciary duty, or has been the subject of a judicial determination that ICANN deems as the substantive equivalent of any of these;
- b. within the past ten years, has been disciplined by any government or industry regulatory body for conduct involving dishonesty or misuse of the funds of others;

- c. within the past ten years has been convicted of any willful tax-related fraud or willful evasion of tax liabilities;
- d. within the past ten years has been convicted of perjury, forswearing, failing to cooperate with a law enforcement investigation, or making false statements to a law enforcement agency or representative;
- e. has ever been convicted of any crime involving the use of computers, telephony systems, telecommunications or the Internet to facilitate the commission of crimes;
- f. has ever been convicted of any crime involving the use of a weapon, force, or the threat of force;
- g. has ever been convicted of any violent or sexual offense victimizing children, the elderly, or individuals with disabilities;
- h. has ever been convicted of the illegal sale, manufacture, or distribution of pharmaceutical drugs, or been convicted or successfully extradited for any offense described in Article 3 of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988<sup>5</sup>;
- i. has ever been convicted or successfully extradited for any offense described in the United Nations Convention against Transnational Organized Crime (all Protocols)<sup>6,7</sup>;
- j. has been convicted of aiding, abetting, facilitating, enabling, conspiring to commit, or failing to report any of the listed crimes within the respective timeframes specified above;

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<sup>5</sup> <http://www.unodc.org/unodc/en/treaties/illicit-traffic.html>

<sup>6</sup> <http://www.unodc.org/unodc/en/treaties/CTOC/index.html>

<sup>7</sup> It is recognized that not all countries have signed on to the UN conventions referenced above. These conventions are being used solely for identification of a list of crimes for which background screening will be performed. It is not necessarily required that an applicant would have been convicted pursuant to the UN convention but merely convicted of a crime listed under these conventions, to trigger these criteria.

- k. has entered a guilty plea as part of a plea agreement or has a court case in any jurisdiction with a disposition of Adjudicated Guilty or Adjudication Withheld (or regional equivalents) for any of the listed crimes within the respective timeframes listed above;
- l. is the subject of a disqualification imposed by ICANN and in effect at the time the application is considered;
- m. has been involved in a pattern of adverse, final decisions indicating that the applicant or individual named in the application was engaged in cybersquatting as defined in the Uniform Domain Name Dispute Resolution Policy (UDRP), the Anti-Cybersquatting Consumer Protection Act (ACPA), or other equivalent legislation, or was engaged in reverse domain name hijacking under the UDRP or bad faith or reckless disregard under the ACPA or other equivalent legislation. Three or more such decisions with one occurring in the last four years will generally be considered to constitute a pattern.
- n. fails to provide ICANN with the identifying information necessary to confirm identity at the time of application or to resolve questions of identity during the background screening process;
- o. fails to provide a good faith effort to disclose all relevant information relating to items (a) – (m).

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

Deceptive Commercial Practices Across Borders<sup>8</sup> may cause an application to be rejected. ICANN may also contact the applicant with additional questions based on information obtained in the background screening process.

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

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

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

### 1.2.2 Required Documents

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

1. **Proof of legal establishment** – Documentation of the applicant's establishment as a specific type of entity in accordance with the applicable laws of its jurisdiction.

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<sup>8</sup> [http://www.oecd.org/document/56/0,3746,en\\_2649\\_34267\\_2515000\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/56/0,3746,en_2649_34267_2515000_1_1_1_1,00.html)

2. **Financial statements.** Applicants must provide audited or independently certified financial statements for the most recently completed fiscal year for the applicant. In some cases, unaudited financial statements may be provided.

Supporting documentation should be submitted in the original language. English translations are not required.

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

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

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

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

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

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

application, it must provide evidence of commitment by the party committing the funds. If applicable, this will be submitted in the financial section of the application.

### 1.2.3 *Community-Based Designation*

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

#### 1.2.3.1 *Definitions*

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

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

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

means here that the applicant has not designated the application as community-based.

### 1.2.3.2 *Implications of Application Designation*

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

**Objection / Dispute Resolution** – All applicants should understand that a formal objection may be filed against any application on community grounds, even if the applicant has not designated itself as community-based or declared the gTLD to be aimed at a particular community. Refer to Module 3, Objection Procedures.

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

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

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

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

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

### ***1.2.3.3 Changes to Application Designation***

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

### ***1.2.4 Notice concerning Technical Acceptance Issues with New gTLDs***

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

Similarly, software applications sometimes attempt to validate domain names and may not recognize new or unknown top-level domains. ICANN has no authority or ability to require that software accept new top-level domains, although it does prominently publicize which top-level domains are valid and has developed a basic tool to

assist application providers in the use of current root-zone data.

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

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

### *1.2.5 Notice concerning TLD Delegations*

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

### *1.2.6 Terms and Conditions*

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

### *1.2.7 Notice of Changes to Information*

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

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

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

### *1.2.8 Voluntary Designation for High Security Zones*

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

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

### ***1.2.9 Security and Stability***

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*Root Zone Stability:* There has been significant study, analysis, and consultation in preparation for launch of the New gTLD Program, indicating that the addition of gTLDs to the root zone will not negatively impact the security or stability of the DNS.

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

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

### ***1.2.10 Resources for Applicant Assistance***

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A variety of support resources are available to gTLD applicants. For example, ICANN may establish a means for providing financial assistance to eligible applicants, as well as providing a webpage as an informational resource for applicants seeking assistance, and organizations offering support. More information will be available on ICANN's

website at <http://www.icann.org/en/topics/new-gtld-program.htm>.<sup>9</sup>

### *1.2.11 Updates to the Applicant Guidebook*

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As approved by the ICANN Board of Directors, this Guidebook forms the basis of the New gTLD Program. ICANN reserves the right to make reasonable updates and changes to the Applicant Guidebook at any time, including as the possible result of new technical standards, reference documents, or policies that might be adopted during the course of the application process. Any such updates or revisions will be posted on ICANN's website.

## *1.3 Information for Internationalized Domain Name Applicants*

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

### *1.3.1 IDN-Specific Requirements*

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

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

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

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<sup>9</sup> The Joint SO/AC New gTLD Applicant Support Working Group is currently developing recommendations for support resources that may be available to gTLD applicants. Information on these resources will be published on the ICANN website once identified.

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

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

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

1. Meaning or restatement of string in English. The applicant will provide a short description of what the string would mean or represent in English.
2. Language of label (ISO 639-1). The applicant will specify the language of the applied-for TLD string, both according to the ISO codes for the representation of names of languages and in English.
3. Script of label (ISO 15924). The applicant will specify the script of the applied-for gTLD string, both according to the ISO codes for the representation of names of scripts, and in English.
4. Unicode code points. The applicant will list all the code points contained in the U-label according to its Unicode form.
5. Applicants must further demonstrate that they have made reasonable efforts to ensure that the encoded IDN string does not cause any rendering or operational problems. For example, problems have been identified in strings with characters of mixed right-to-left and left-to-right directionality when numerals are adjacent to the path separator (i.e., the dot).<sup>10</sup>

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

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<sup>10</sup> See examples at <http://stupid.domain.name/node/683>

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

### 1.3.2 IDN Tables

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

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

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

Each applicant is responsible for developing its IDN Tables, including specification of any variant characters. Tables must comply with ICANN's IDN Guidelines<sup>11</sup> and any updates thereto, including:

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

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<sup>11</sup> See <http://www.icann.org/en/topics/idn/idn-guidelines-26apr07.pdf>

- Depositing IDN tables with the IANA Repository for IDN Practices (once the TLD is delegated).

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

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

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

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

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

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

### ***1.3.3 IDN Variant TLDs***

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

Each application contains one applied-for gTLD string. The applicant may also declare any variant strings for the TLD

in its application. However, no variant gTLD strings will be delegated through the New gTLD Program until variant management solutions are developed and implemented.<sup>12</sup> Declaring variant strings is informative only and will not imply any right or claim to the declared variant strings.

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

The following scenarios are possible during the gTLD evaluation process:

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

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

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

- b. Multiple applicants apply for strings that are identified by ICANN as variants of one another. These applications will be placed in a contention set and will follow the contention resolution procedures in Module 4.

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<sup>12</sup> The ICANN Board directed that work be pursued on variant management in its resolution on 25 Sep 2010, <http://www.icann.org/en/minutes/resolutions-25sep10-en.htm#2.5>.

- c. Applicant submits an application for a gTLD string and does not indicate variants to the applied-for gTLD string. ICANN will not identify variant strings unless scenario (b) above occurs.

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

Variant strings declared in the application will be reviewed for consistency with the top-level tables submitted in the application. Should any declared variant strings not be based on use of variant characters according to the submitted top-level tables, the applicant will be notified and the declared string will no longer be considered part of the application.

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

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

## *1.4 Submitting an Application*

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

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

ICANN will not accept application forms or supporting materials submitted through other means than TAS (that is, hard copy, fax, email), unless such submission is in

accordance with specific instructions from ICANN to applicants.

### ***1.4.1 Accessing the TLD Application System***

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

#### ***1.4.1.1 User Registration***

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

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

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

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

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

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

No new user registrations will be accepted after [date to be inserted in final version of Applicant Guidebook].

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

#### *1.4.1.2 Application Form*

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

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

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

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

### **1.4.2 Customer Service during the Application Process**

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Assistance will be available to applicants throughout the application process via the Applicant Service Center (ASC). The ASC will be staffed with customer service agents to answer questions relating to the New gTLD Program, the application process, and TAS.

### **1.4.3 Backup Application Process**

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

## 1.5 Fees and Payments

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

### 1.5.1 gTLD Evaluation Fee

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

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

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

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

Refund Available to Applicant	Percentage of Evaluation Fee	Amount of Refund
Within 21 calendar days of a GAC Early Warning	80%	USD 148,000
After posting of applications until posting of Initial Evaluation results	70%	USD 130,000
After posting Initial	35%	USD 65,000

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

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

An applicant that wishes to withdraw an application must initiate the process through TAS and submit the required form to request a refund, including agreement to the terms and conditions for withdrawal. Refunds will only be issued to the organization that submitted the original payment. All refunds are paid by wire transfer. Any bank transfer or transaction fees incurred by ICANN will be deducted from the amount paid.

***Note on 2000 proof-of-concept round applicants --***

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

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

that such entity applied for in the 2000 proof-of-concept application round.

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

### ***1.5.2 Fees Required in Some Cases***

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Applicants may be required to pay additional fees in certain cases where specialized process steps are applicable. Those possible additional fees<sup>13</sup> include:

- ***Registry Services Review Fee*** – If applicable, this fee is payable for additional costs incurred in referring an application to the Registry Services Technical Evaluation Panel (RSTEP) for an extended review. Applicants will be notified if such a fee is due. The fee for a three-member RSTEP review team is anticipated to be USD 50,000. In some cases, five-member panels might be required, or there might be increased scrutiny at a greater cost. The amount of the fee will cover the cost of the RSTEP review. In the event that reviews of proposed registry services can be consolidated across multiple applications or applicants, ICANN will apportion the fees in an equitable manner. In every case, the applicant will be advised of the cost before initiation of the review. Refer to subsection 2.2.3 of Module 2 on Registry Services review.
- ***Dispute Resolution Filing Fee*** – This amount must accompany any filing of a formal objection and any response that an applicant files to an objection. This fee is payable directly to the applicable dispute resolution service provider in accordance with the provider's payment instructions. ICANN estimates that filing fees could range from approximately USD 1,000 to USD 5,000 (or more) per party per proceeding. Refer to the appropriate provider for the relevant amount. Refer to Module 3 for dispute resolution procedures.
- ***Advance Payment of Costs*** – In the event of a formal objection, this amount is payable directly to the applicable dispute resolution service provider in

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<sup>13</sup> The estimated fee amounts provided in this section 1.5.2 will be updated upon engagement of panel service providers and establishment of fees.

accordance with that provider's procedures and schedule of costs. Ordinarily, both parties in the dispute resolution proceeding will be required to submit an advance payment of costs in an estimated amount to cover the entire cost of the proceeding. This may be either an hourly fee based on the estimated number of hours the panelists will spend on the case (including review of submissions, facilitation of a hearing, if allowed, and preparation of a decision), or a fixed amount. In cases where disputes are consolidated and there are more than two parties involved, the advance payment will occur according to the dispute resolution service provider's rules.

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

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

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

scores at or above the threshold for the community priority evaluation will have its deposit refunded.

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

### *1.5.3 Payment Methods*

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Payments to ICANN should be submitted by **wire transfer**. Instructions for making a payment by wire transfer will be available in TAS.<sup>14</sup>

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

### *1.5.4 Requesting a Remittance Form*

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

## *1.6 Questions about this Applicant Guidebook*

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For assistance and questions an applicant may have in the process of completing the application form, applicants should use the customer support resources available via the ASC. Applicants who are unsure of the information being sought in a question or the parameters for acceptable documentation are encouraged to communicate these questions through the appropriate support channels before the application is submitted. This helps avoid the need for exchanges with evaluators to clarify information, which extends the timeframe associated with processing the application.

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

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

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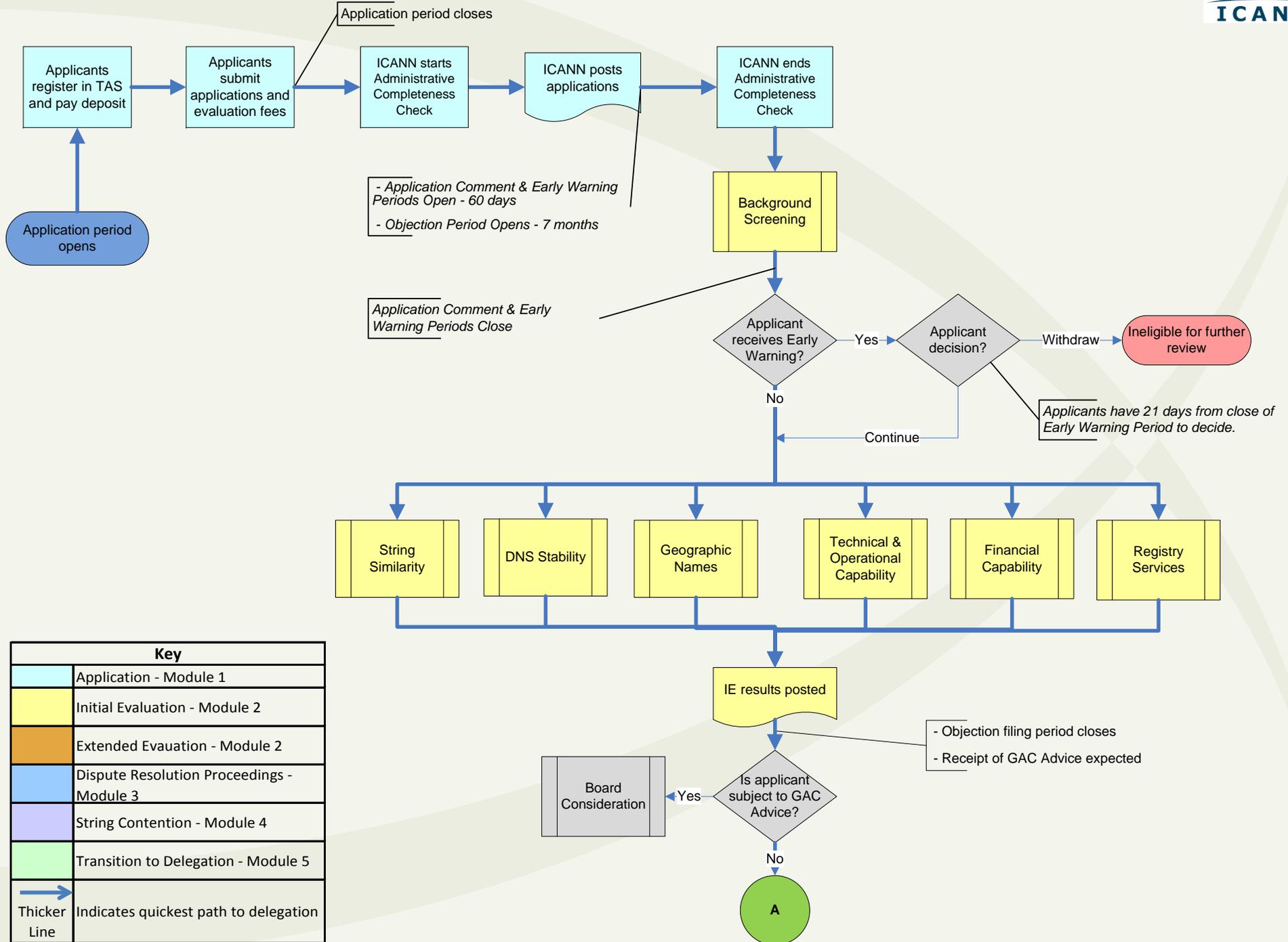
<sup>14</sup> Wire transfer is the preferred method of payment as it offers a globally accessible and dependable means for international transfer of funds. This enables ICANN to receive the fee and begin processing applications as quickly as possible.

regarding the preparation of an application. Applicants that contact ICANN for clarification about aspects of the application will be referred to the ASC.

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



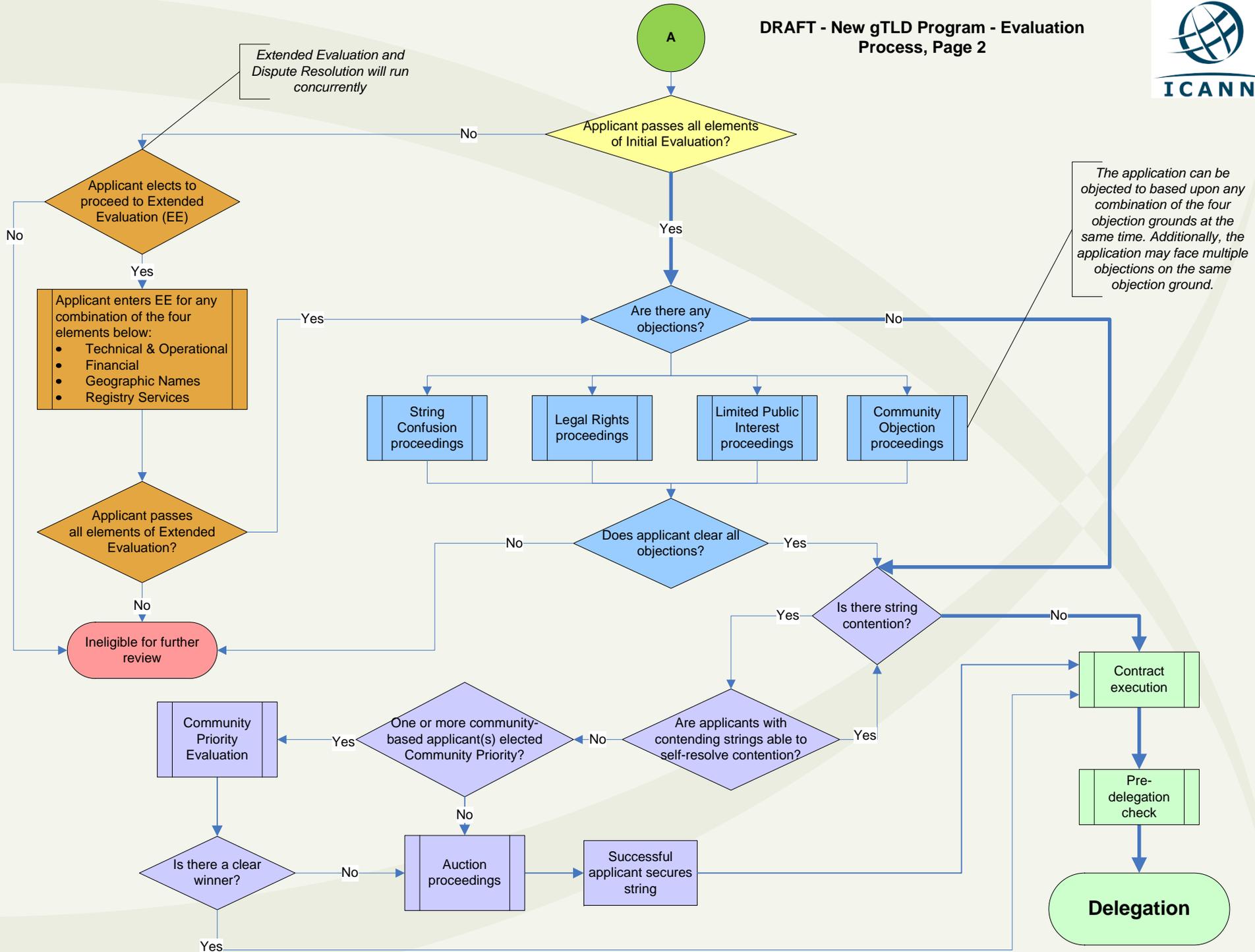
# DRAFT - New gTLD Program - Evaluation Process



Key	
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<span style="background-color: #ffffe0; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span>	Initial Evaluation - Module 2
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<span style="background-color: #ccccff; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span>	String Contention - Module 4
<span style="background-color: #ccffcc; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span>	Transition to Delegation - Module 5
<span style="border-bottom: 3px solid blue; display: inline-block; width: 15px;"></span>	Indicates quickest path to delegation
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DRAFT - New gTLD Program - Evaluation Process, Page 2





# Applicant Guidebook

(30 May 2011)

## Module 2

Potential applicants should be aware that this version of the Guidebook is for consideration and not yet approved. The proposed details of the New gTLD Program remain subject to further consultation and revision.

30 May 2011

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# Module 2

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## *Evaluation Procedures*

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

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

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

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

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

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

### *2.1 Background Screening*

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Background screening will be conducted in two areas:

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

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

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

### *2.1.1 General business diligence and criminal history*

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

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

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

Note that the applicant is expected to disclose potential problems in meeting the criteria in the application, and provide any clarification or explanation at the time of application submission. Results returned from the background screening process will be matched with the disclosures provided by the applicant and those cases will be followed up to resolve issues of discrepancies or potential false positives.

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

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

### *2.1.2 History of cybersquatting*

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

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

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

## *2.2 Initial Evaluation*

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

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

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

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

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

## 2.2.1 *String Reviews*

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

### 2.2.1.1 *String Similarity Review*

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

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

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

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

#### 2.2.1.1.1 *Reviews Performed*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **2.2.1.1.2 Review Methodology**

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

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

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

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

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

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

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

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

#### ***2.2.1.1.3 Outcomes of the String Similarity Review***

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

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

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

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

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

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

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

**2.2.1.2 Reserved Names**

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

**Top-Level Reserved Names List**

<i>AFRINIC</i>	<i>IANA-SERVERS</i>	<i>NRO</i>
<i>ALAC</i>	<i>ICANN</i>	<i>RFC-EDITOR</i>
<i>APNIC</i>	<i>IESG</i>	<i>RIPE</i>
<i>ARIN</i>	<i>IETF</i>	<i>ROOT-SERVERS</i>
<i>ASO</i>	<i>INTERNIC</i>	<i>RSSAC</i>
<i>CCNSO</i>	<i>INVALID</i>	<i>SSAC</i>
<i>EXAMPLE*</i>	<i>IRTF</i>	<i>TEST*</i>
<i>GAC</i>	<i>ISTF</i>	<i>TLD</i>
<i>GNSO</i>	<i>LACNIC</i>	<i>WHOIS</i>
<i>GTLD-SERVERS</i>	<i>LOCAL</i>	<i>WWW</i>
<i>IAB</i>	<i>LOCALHOST</i>	
<i>IANA</i>	<i>NIC</i>	

\*Note that in addition to the above strings, ICANN will reserve translations of the terms "test" and "example" in multiple languages. The remainder of the strings are reserved only in the form included above.

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

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

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

### *2.2.1.3 DNS Stability Review*

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

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

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

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

string raises significant security or stability issues as described in the following section.

#### **2.2.1.3.1 DNS Stability: String Review Procedure**

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

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

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

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

If the panel determines that the string complies with relevant standards and does not create the conditions described above, the application will pass the DNS Stability review.

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

#### **2.2.1.3.2 String Requirements**

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

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

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

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

**Part II -- Requirements for Internationalized Domain Names**

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

- 2.1 The label must be an A-label as defined in IDNA, converted from (and convertible to) a U-label that is consistent with the definition in IDNA, and further restricted by the following, non-exhaustive, list of limitations:

- 2.1.1 Must be a valid A-label according to IDNA.
  - 2.1.2 The derived property value of all codepoints used in the U-label, as defined by IDNA, must be PVALID or CONTEXT (accompanied by unambiguous contextual rules).<sup>4</sup>
  - 2.1.3 The general category of all codepoints, as defined by IDNA, must be one of (Li, Lo, Lm, Mn).
  - 2.1.4 The U-label must be fully compliant with Normalization Form C, as described in *Unicode Standard Annex #15: Unicode Normalization Forms*. See also examples in <http://unicode.org/faq/normalization.html>.
  - 2.1.5 The U-label must consist entirely of characters with the same directional property, or fulfill the requirements of the Bidi rule per RFC 5893.
- 2.2 The label must meet the relevant criteria of the ICANN *Guidelines for the Implementation of Internationalised Domain Names*. See <http://www.icann.org/en/topics/idn/implementation-guidelines.htm>. This includes the following, non-exhaustive, list of limitations:
- 2.2.1 All code points in a single label must be taken from the same script as determined by the Unicode Standard Annex #24: Unicode Script Property.
  - 2.2.2 Exceptions to 2.2.1 are permissible for languages with established orthographies and conventions that require the commingled use of multiple scripts. However, even with this exception, visually confusable characters from different scripts will not be allowed to co-exist in a single set of permissible code points unless a corresponding policy and character table are clearly defined.

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

**Part III - Policy Requirements for Generic Top-Level Domains** – These requirements apply to all prospective top-level domain strings applied for as gTLDs.

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

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

#### **2.2.1.4 Geographic Names Review**

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

##### **2.2.1.4.1 Treatment of Country or Territory Names<sup>6</sup>**

Applications for strings that are country or territory names will not be approved, as they are not available under the

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

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

New gTLD Program in this application round. A string shall be considered to be a country or territory name if:

- i. it is an alpha-3 code listed in the ISO 3166-1 standard.
- ii. it is a long-form name listed in the ISO 3166-1 standard, or a translation of the long-form name in any language.
- iii. it is a short-form name listed in the ISO 3166-1 standard, or a translation of the short-form name in any language.
- iv. it is the short- or long-form name association with a code that has been designated as “exceptionally reserved” by the ISO 3166 Maintenance Agency.
- v. it is a separable component of a country name designated on the “Separable Country Names List,” or is a translation of a name appearing on the list, in any language. See the Annex at the end of this module.
- vi. it is a permutation or transposition of any of the names included in items (i) through (v). Permutations include removal of spaces, insertion of punctuation, and addition or removal of grammatical articles like “the.” A transposition is considered a change in the sequence of the long or short-form name, for example, “RepublicCzech” or “IslandsCayman.”
- vii. it is a name by which a country is commonly known, as demonstrated by evidence that the country is recognized by that name by an intergovernmental or treaty organization.

#### 2.2.1.4.2 *Geographic Names Requiring Government Support*

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

1. An application for any string that is a representation, in any language, of the capital city

name of any country or territory listed in the ISO 3166-1 standard.

2. An application for a city name, where the applicant declares that it intends to use the gTLD for purposes associated with the city name.

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

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

- (a) It is clear from applicant statements within the application that the applicant will use the TLD primarily for purposes associated with the city name; and
  - (b) The applied-for string is a city name as listed on official city documents.<sup>7</sup>
3. An application for any string that is an exact match of a sub-national place name, such as a county, province, or state, listed in the ISO 3166-2 standard.
  4. An application for a string listed as a UNESCO region<sup>8</sup> or appearing on the “Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings” list.<sup>9</sup>

In the case of an application for a string appearing on either of the lists above, documentation of support will be required from at least 60% of the respective national governments in the region, and

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

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

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

there may be no more than one written statement of objection to the application from relevant governments in the region and/or public authorities associated with the continent or the region.

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

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

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

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

It is the applicant's responsibility to:

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

Note: the level of government and which administrative agency is responsible for the filing of letters of support or non-objection is a matter for each national administration

to determine. Applicants should consult within the relevant jurisdiction to determine the appropriate level of support.

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

#### **2.2.1.4.3 Documentation Requirements**

The documentation of support or non-objection should include a signed letter from the relevant government or public authority. Understanding that this will differ across the respective jurisdictions, the letter could be signed by the minister with the portfolio responsible for domain name administration, ICT, foreign affairs, or the Office of the Prime Minister or President of the relevant jurisdiction; or a senior representative of the agency or department responsible for domain name administration, ICT, foreign affairs, or the Office of the Prime Minister. To assist the applicant in determining who the relevant government or public authority may be for a potential geographic name, the applicant may wish to consult with the relevant Governmental Advisory Committee (GAC) representative.<sup>10</sup>

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

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

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

Applicants and governments may conduct discussions concerning government support for an application at any time. Applicants are encouraged to begin such discussions

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<sup>10</sup> See <http://gac.icann.org/gac-members>

at the earliest possible stage, and enable governments to follow the processes that may be necessary to consider, approve, and generate a letter of support or non-objection.

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

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

#### *2.2.1.4.4 Review Procedure for Geographic Names*

A Geographic Names Panel (GNP) will determine whether each applied-for gTLD string represents a geographic name, and verify the relevance and authenticity of the supporting documentation where necessary.

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

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

For any application where the GNP determines that the applied-for gTLD string is a geographic name requiring government support, the GNP will confirm that the applicant has provided the required documentation from the relevant governments or public authorities, and that the communication from the government or public authority is legitimate and contains the required content. ICANN may confirm the authenticity of the communication by consulting with the relevant diplomatic authorities or

members of ICANN's Governmental Advisory Committee for the government or public authority concerned on the competent authority and appropriate point of contact within their administration for communications.

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

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

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

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

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

## 2.2.2 *Applicant Reviews*

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

### 2.2.2.1 *Technical/Operational Review*

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

Applicants are not required to have deployed an actual gTLD registry to pass the Technical/Operational review. It will be necessary, however, for an applicant to demonstrate a clear understanding and accomplishment of some groundwork toward the key technical and operational aspects of a gTLD registry operation. Subsequently, each applicant that passes the technical evaluation and all other steps will be required to complete a pre-delegation technical test prior to delegation of the new gTLD. Refer to Module 5, Transition to Delegation, for additional information.

### 2.2.2.2 *Financial Review*

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

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

### 2.2.2.3 *Evaluation Methodology*

Dedicated technical and financial evaluation panels will conduct the technical/operational and financial reviews,

according to the established criteria and scoring mechanism included as an attachment to this module. These reviews are conducted on the basis of the information each applicant makes available to ICANN in its response to the questions in the Application Form.

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

It is the applicant's responsibility to ensure that the questions have been fully answered and the required documentation is attached. Evaluators are entitled, but not obliged, to request further information or evidence from an applicant, and are not obliged to take into account any information or evidence that is not made available in the application and submitted by the due date, unless explicitly requested by the evaluators.

### *2.2.3 Registry Services Review*

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

#### *2.2.3.1 Definitions*

**Registry services** are defined as:

1. operations of the registry critical to the following tasks: the receipt of data from registrars concerning registrations of domain names and name servers; provision to registrars of status information relating to the zone servers for the TLD; dissemination of TLD zone files; operation of the registry zone servers; and dissemination of contact and other information concerning domain name server registrations in the TLD as required by the registry agreement;

2. other products or services that the registry operator is required to provide because of the establishment of a consensus policy; and
3. any other products or services that only a registry operator is capable of providing, by reason of its designation as the registry operator.

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

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

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

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

**Security** – an effect on security by the proposed registry service means (1) the unauthorized disclosure, alteration, insertion or destruction of registry data, or (2) the unauthorized access to or disclosure of information or resources on the Internet by systems operating in accordance with all applicable standards.

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

#### 2.2.3.2 Customary Services

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

- Receipt of data from registrars concerning registration of domain names and name servers

- Dissemination of TLD zone files
- Dissemination of contact or other information concerning domain name registrations
- DNS Security Extensions

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

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

### 2.2.3.3 TLD Zone Contents

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

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

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

### 2.2.3.4 Methodology

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

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

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

#### ***2.2.4 Applicant's Withdrawal of an Application***

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

### ***2.3 Extended Evaluation***

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

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

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

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

### ***2.3.1 Geographic Names Extended Evaluation***

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

If the applicant submits the documentation to the Geographic Names Panel by the required date, the GNP will perform its review of the documentation as detailed in section 2.2.1.4. If the applicant has not provided the documentation by the required date (at least 90 days from the date of the notice), the application will not pass the Extended Evaluation, and no further reviews are available.

### ***2.3.2 Technical/Operational or Financial Extended Evaluation***

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

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

An applicant participating in an Extended Evaluation on the Technical / Operational or Financial reviews will have the option to have its application reviewed by the same

evaluation panelists who performed the review during the Initial Evaluation period, or to have a different set of panelists perform the review during Extended Evaluation.

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

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

### *2.3.3 Registry Services Extended Evaluation*

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

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

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

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

If the RSTEP finds that one or more of the applicant's proposed registry services may be introduced without risk of a meaningful adverse effect on security or stability, these services will be included in the applicant's registry agreement with ICANN. If the RSTEP finds that the proposed service would create a risk of a meaningful adverse effect on security or stability, the applicant may elect to proceed with its application without the proposed service, or withdraw its application for the gTLD. In this instance, an applicant has 15 calendar days to notify ICANN of its intent

to proceed with the application. If an applicant does not explicitly provide such notice within this time frame, the application will proceed no further.

## **2.4 Parties Involved in Evaluation**

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

### **2.4.1 Panels and Roles**

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

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

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

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

The **Financial Evaluation Panel** will review each application against the relevant business, financial and organizational criteria contained in the Applicant Guidebook, to determine whether the applicant is financially capable of maintaining a gTLD registry as proposed in the application.

This occurs during the Financial review in Initial Evaluation, and may also occur in Extended Evaluation if elected by the applicant.

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

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

#### **2.4.2 Panel Selection Process**

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ICANN is in the process of selecting qualified third-party providers to perform the various reviews.<sup>11</sup> In addition to the specific subject matter expertise required for each panel, specified qualifications are required, including:

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

The providers will be formally engaged and announced on ICANN's website prior to the opening of the Application Submission period.

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<sup>11</sup> See <http://icann.org/en/topics/new-gtlds/open-tenders-eoi-en.htm>.

### 2.4.3 Code of Conduct Guidelines for Panelists

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

Panelists shall conduct themselves as thoughtful, competent, well prepared, and impartial professionals throughout the application process. Panelists are expected to comply with equity and high ethical standards while assuring the Internet community, its constituents, and the public of objectivity, integrity, confidentiality, and credibility. Unethical actions, or even the appearance of compromise, are not acceptable. Panelists are expected to be guided by the following principles in carrying out their respective responsibilities. This Code is intended to summarize the principles and nothing in this Code should be considered as limiting duties, obligations or legal requirements with which Panelists must comply.

***Bias*** -- Panelists shall:

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

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

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

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

**Confidentiality** -- Confidentiality is an integral part of the evaluation process. Panelists must have access to sensitive information in order to conduct evaluations. Panelists must maintain confidentiality of information entrusted to them by ICANN and the Applicant and any other confidential information provided to them from whatever source, except when disclosure is legally mandated or has been authorized by ICANN. "Confidential information" includes all elements of the Program and information gathered as part of the process – which includes but is not limited to: documents, interviews, discussions, interpretations, and analyses – related to the review of any new gTLD application.

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

#### **2.4.3.1 Conflict of Interest Guidelines for Panelists**

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

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

- Require each Evaluation Panelist (provider and individual) to acknowledge and document understanding of the Conflict of Interest guidelines.

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

***Compliance Period*** -- All Evaluation Panelists must comply with the Conflict of Interest guidelines beginning with the opening date of the Application Submission period and ending with the public announcement by ICANN of the final outcomes of all the applications from the Applicant in question.

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

Evaluation Panelists and Immediate Family Members:

- Must not be under contract, have or be included in a current proposal to provide Professional Services for or on behalf of the Applicant during the Compliance Period.
- Must not currently hold or be committed to acquire any interest in a privately-held Applicant.
- Must not currently hold or be committed to acquire more than 1% of any publicly listed Applicant's outstanding equity securities or other ownership interests.
- Must not be involved or have an interest in a joint venture, partnership or other business arrangement with the Applicant.
- Must not have been named in a lawsuit with or against the Applicant.

- Must not be a:
  - Director, officer, or employee, or in any capacity equivalent to that of a member of management of the Applicant;
  - Promoter, underwriter, or voting trustee of the Applicant; or
  - Trustee for any pension or profit-sharing trust of the Applicant.

***Definitions--***

Evaluation Panelist: An Evaluation Panelist is any individual associated with the review of an application. This includes any primary, secondary, and contingent third party Panelists engaged by ICANN to review new gTLD applications.

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

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

***2.4.3.2 Code of Conduct Violations***

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

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

Complaints about violations of the Code of Conduct by a Panelist may be brought to the attention of ICANN via the public comment and applicant support mechanisms, throughout the evaluation period. Concerns of applicants regarding panels should be communicated via the defined support channels (see subsection 1.4.2). Concerns

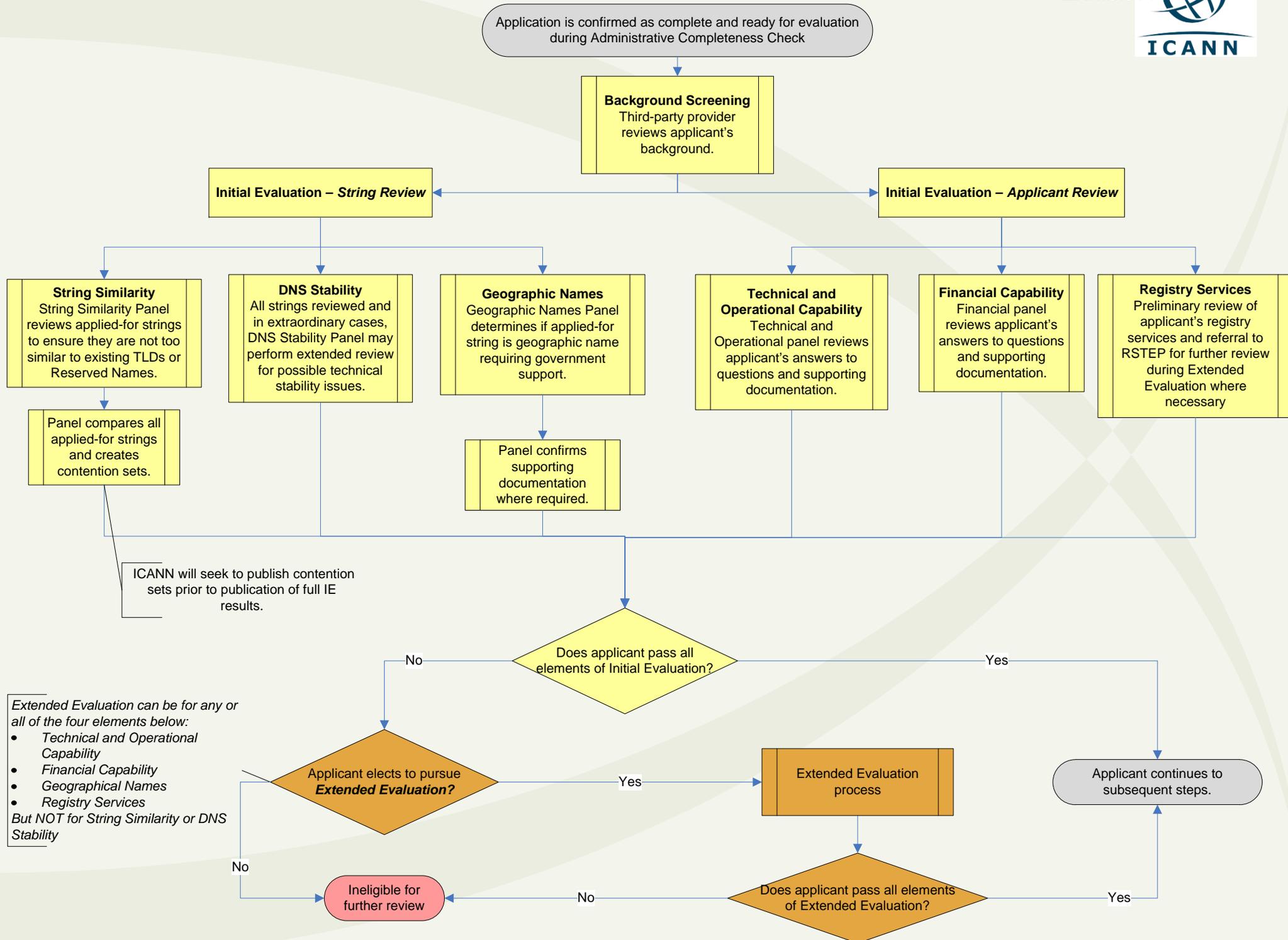
of the general public (i.e., non-applicants) can be raised via the public comment forum, as described in Module 1.

#### **2.4.4 Communication Channels**

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

# DRAFT - New gTLD Program – Initial Evaluation and Extended Evaluation



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

- Technical and Operational Capability
- Financial Capability
- Geographical Names
- Registry Services

But NOT for String Similarity or DNS Stability

## Annex: Separable Country Names List

Under various proposed ICANN policies, gTLD application restrictions on country or territory names are tied to listing in property fields of the ISO 3166-1 standard. Notionally, the ISO 3166-1 standard has an “English short name” field which is the common name for a country and can be used for such protections; however, in some cases this does not represent the common name. This registry seeks to add additional protected elements which are derived from definitions in the ISO 3166-1 standard. An explanation of the various classes is included below.

Separable Country Names List

Code	English Short Name	Cl.	Separable Name
ax	Åland Islands	B1	Åland
as	American Samoa	C	Tutuila
		C	Swain's Island
ao	Angola	C	Cabinda
ag	Antigua and Barbuda	A	Antigua
		A	Barbuda
		C	Redonda Island
au	Australia	C	Lord Howe Island
		C	Macquarie Island
		C	Ashmore Island
		C	Cartier Island
		C	Coral Sea Islands
bo	Bolivia, Plurinational State of	B1	Bolivia
bq	Bonaire, Saint Eustatius and Saba	A	Bonaire
		A	Saint Eustatius
		A	Saba
ba	Bosnia and Herzegovina	A	Bosnia
		A	Herzegovina
br	Brazil	C	Fernando de Noronha Island
		C	Martim Vaz Islands
		C	Trinidad Island
io	British Indian Ocean Territory	C	Chagos Archipelago
		C	Diego Garcia
bn	Brunei Darussalam	B1	Brunei
		C	Negara Brunei Darussalam
cv	Cape Verde	C	São Tiago
		C	São Vicente
ky	Cayman Islands	C	Grand Cayman
cl	Chile	C	Easter Island
		C	Juan Fernández Islands
		C	Sala y Gómez Island
		C	San Ambrosio Island
		C	San Félix Island
cc	Cocos (Keeling) Islands	A	Cocos Islands
		A	Keeling Islands
co	Colombia	C	Malpelo Island
		C	San Andrés Island
		C	Providencia Island
km	Comoros	C	Anjouan
		C	Grande Comore
		C	Mohéli
ck	Cook Islands	C	Rarotonga
cr	Costa Rica	C	Coco Island
ec	Ecuador	C	Galápagos Islands
gq	Equatorial Guinea	C	Annobón Island
		C	Bioko Island

		C	Rio Muni
fk	Falkland Islands (Malvinas)	B1	Falkland Islands
		B1	Malvinas
fo	Faroe Islands	A	Faroe
fj	Fiji	C	Vanua Levu
		C	Viti Levu
		C	Rotuma Island
pf	French Polynesia	C	Austral Islands
		C	Gambier Islands
		C	Marquesas Islands
		C	Society Archipelago
		C	Tahiti
		C	Tuamotu Islands
		C	Clipperton Island
tf	French Southern Territories	C	Amsterdam Islands
		C	Crozet Archipelago
		C	Kerguelen Islands
		C	Saint Paul Island
gr	Greece	C	Mount Athos
		B1	**
gd	Grenada	C	Southern Grenadine Islands
		C	Carriacou
gp	Guadeloupe	C	la Désirade
		C	Marie-Galante
		C	les Saintes
hm	Heard Island and McDonald Islands	A	Heard Island
		A	McDonald Islands
va	Holy See (Vatican City State)	A	Holy See
		A	Vatican
hn	Honduras	C	Swan Islands
in	India	C	Amindivi Islands
		C	Andaman Islands
		C	Laccadive Islands
		C	Minicoy Island
		C	Nicobar Islands
ir	Iran, Islamic Republic of	B1	Iran
ki	Kiribati	C	Gilbert Islands
		C	Tarawa
		C	Banaba
		C	Line Islands
		C	Kiritimati
		C	Phoenix Islands
		C	Abariringa
		C	Enderbury Island
kp	Korea, Democratic People's Republic of	C	North Korea
kr	Korea, Republic of	C	South Korea
la	Lao People's Democratic Republic	B1	Laos
ly	Libyan Arab Jamahiriya	B1	Libya
mk	Macedonia, the Former Yugoslav Republic of	B1	**
my	Malaysia	C	Sabah
		C	Sarawak
mh	Marshall Islands	C	Jaluit
			Kwajalein
			Majuro
mu	Mauritius	C	Agalega Islands
		C	Cargados Carajos Shoals
		C	Rodrigues Island

fm	Micronesia, Federated States of	B1	Micronesia
		C	Caroline Islands (see also pw)
		C	Chuuk
		C	Kosrae
		C	Pohnpei
		C	Yap
md	Moldova, Republic of	B1	Moldova
		C	Moldava
nc	New Caledonia	C	Loyalty Islands
mp	Northern Mariana Islands	C	Mariana Islands
		C	Saipan
om	Oman	C	Musandam Peninsula
pw	Palau	C	Caroline Islands (see also fm)
		C	Babelthuap
ps	Palestinian Territory, Occupied	B1	Palestine
pg	Papua New Guinea	C	Bismarck Archipelago
		C	Northern Solomon Islands
		C	Bougainville
pn	Pitcairn	C	Ducie Island
		C	Henderson Island
		C	Oeno Island
re	Réunion	C	Bassas da India
		C	Europa Island
		C	Glorioso Island
		C	Juan de Nova Island
		C	Tromelin Island
ru	Russian Federation	B1	Russia
		C	Kaliningrad Region
sh	Saint Helena, Ascension, and Tristan de Cunha	A	Saint Helena
		A	Ascension
		A	Tristan de Cunha
		C	Gough Island
		C	Tristan de Cunha Archipelago
kn	Saint Kitts and Nevis	A	Saint Kitts
		A	Nevis
pm	Saint Pierre and Miquelon	A	Saint Pierre
		A	Miquelon
vc	Saint Vincent and the Grenadines	A	Saint Vincent
		A	The Grenadines
		C	Northern Grenadine Islands
		C	Bequia
		C	Saint Vincent Island
ws	Samoa	C	Savai'i
		C	Upolu
st	Sao Tome and Principe	A	Sao Tome
		A	Principe
sc	Seychelles	C	Mahé
		C	Aldabra Islands
		C	Amirante Islands
		C	Cosmoledo Islands
		C	Farquhar Islands
sb	Solomon Islands	C	Santa Cruz Islands

		C	Southern Solomon Islands
		C	Guadalcanal
za	South Africa	C	Marion Island
		C	Prince Edward Island
gs	South Georgia and the South Sandwich Islands	A	South Georgia
		A	South Sandwich Islands
sj	Svalbard and Jan Mayen	A	Svalbard
		A	Jan Mayen
		C	Bear Island
sy	Syrian Arab Republic	B1	Syria
tw	Taiwan, Province of China	B1	Taiwan
		C	Penghu Islands
		C	Pescadores
tz	Tanzania, United Republic of	B1	Tanzania
tl	Timor-Leste	C	Oecussi
to	Tonga	C	Tongatapu
tt	Trinidad and Tobago	A	Trinidad
		A	Tobago
tc	Turks and Caicos Islands	A	Turks Islands
		A	Caicos Islands
tv	Tuvalu	C	Fanafuti
ae	United Arab Emirates	B1	Emirates
us	United States	B2	America
um	United States Minor Outlying Islands	C	Baker Island
		C	Howland Island
		C	Jarvis Island
		C	Johnston Atoll
		C	Kingman Reef
		C	Midway Islands
		C	Palmyra Atoll
		C	Wake Island
		C	Navassa Island
vu	Vanuatu	C	Efate
		C	Santo
ve	Venezuela, Bolivarian Republic of	B1	Venezuela
		C	Bird Island
vg	Virgin Islands, British	B1	Virgin Islands
		C	Anegada
		C	Jost Van Dyke
		C	Tortola
		C	Virgin Gorda
vi	Virgin Islands, US	B1	Virgin Islands
		C	Saint Croix
		C	Saint John
		C	Saint Thomas
wf	Wallis and Futuna	A	Wallis
		A	Futuna
		C	Hoorn Islands
		C	Wallis Islands
		C	Uvea
ye	Yemen	C	Socotra Island

## Maintenance

A Separable Country Names Registry will be maintained and published by ICANN Staff.

Each time the ISO 3166-1 standard is updated with a new entry, this registry will be reappraised to identify if the changes to the standard warrant changes to the entries in this registry. Appraisal will be based on the criteria listing in the "Eligibility" section of this document.

Codes reserved by the ISO 3166 Maintenance Agency do not have any implication on this registry, only entries derived from normally assigned codes appearing in ISO 3166-1 are eligible.

If an ISO code is struck off the ISO 3166-1 standard, any entries in this registry deriving from that code must be struck.

## **Eligibility**

Each record in this registry is derived from the following possible properties:

- Class A:** The ISO 3166-1 English Short Name is comprised of multiple, separable parts whereby the country is comprised of distinct sub-entities. Each of these separable parts is eligible in its own right for consideration as a country name. For example, "Antigua and Barbuda" is comprised of "Antigua" and "Barbuda."
- Class B:** The ISO 3166-1 English Short Name (1) or the ISO 3166-1 English Full Name (2) contains additional language as to the type of country the entity is, which is often not used in common usage when referencing the country. For example, one such short name is "The Bolivarian Republic of Venezuela" for a country in common usage referred to as "Venezuela."
- \*\* Macedonia is a separable name in the context of this list; however, due to the ongoing dispute listed in UN documents between the Hellenic Republic (Greece) and the Former Yugoslav Republic of Macedonia over the name, no country will be afforded attribution or rights to the name "Macedonia" until the dispute over the name has been resolved. See <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N93/240/37/IMG/N9324037.pdf>.
- Class C:** The ISO 3166-1 Remarks column containing synonyms of the country name, or sub-national entities, as denoted by "often referred to as," "includes", "comprises", "variant" or "principal islands".

In the first two cases, the registry listing must be directly derivative from the English Short Name by excising words and articles. These registry listings do not include vernacular or other non-official terms used to denote the country.

Eligibility is calculated in class order. For example, if a term can be derived both from Class A and Class C, it is only listed as Class A.

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# *Attachment to Module 2*

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## *Sample Letter of Government Support*

**[This letter should be provided on official letterhead]**

ICANN  
Suite 330, 4676 Admiralty Way  
Marina del Rey, CA 90292

Attention: New gTLD Evaluation Process

Subject: Letter for support for [TLD requested]

This letter is to confirm that [government entity] fully supports the application for [TLD] submitted to ICANN by [applicant] in the New gTLD Program. As the [Minister/Secretary/position] I confirm that I have the authority of the [x government/public authority] to be writing to you on this matter. [Explanation of government entity, relevant department, division, office, or agency, and what its functions and responsibilities are]

The gTLD will be used to [explain your understanding of how the name will be used by the applicant. This could include policies developed regarding who can register a name, pricing regime and management structures.] [Government/public authority/department] has worked closely with the applicant in the development of this proposal.

The [x government/public authority] supports this application, and in doing so, understands that in the event that the application is successful, [applicant] will be required to enter into a Registry Agreement with ICANN. In doing so, they will be required to pay fees to ICANN and comply with consensus policies developed through the ICANN multi-stakeholder policy processes.

[Government / public authority] further understands that, in the event of a dispute between [government/public authority] and the applicant, ICANN will comply with a legally binding order from a court in the jurisdiction of [government/public authority].

**[Optional]** This application is being submitted as a community-based application, and as such it is understood that the Registry Agreement will reflect the community restrictions proposed in the application. In the event that we believe the registry is not complying with these restrictions, possible avenues of recourse include the Registry Restrictions Dispute Resolution Procedure.

**[Optional]** I can advise that in the event that this application is successful [government/public authority] will enter into a separate agreement with the applicant. This agreement will outline the conditions under which we support them in the operation of the TLD, and circumstances under which we would withdraw that support. ICANN will not be a party to this agreement, and enforcement of this agreement lies fully with [government/public authority].

[Government / public authority] understands that the Geographic Names Panel engaged by ICANN will, among other things, conduct due diligence on the authenticity of this documentation. I would request that if additional information is required during this process, that [name and contact details] be contacted in the first instance.

Thank you for the opportunity to support this application.

Yours sincerely

Signature from relevant government/public authority

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# *Attachment to Module 2*

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## *Evaluation Questions and Criteria*

Since ICANN was founded in 1998 as a not-for-profit, multi-stakeholder organization, one of its key mandates has been to promote competition in the domain name market. ICANN's mission specifically calls for the corporation to maintain and build on processes that will ensure competition and consumer interests – without compromising Internet security and stability. This includes the consideration and implementation of new gTLDs. It is ICANN's goal to make the criteria and evaluation as objective as possible.

While new gTLDs are viewed by ICANN as important to fostering choice, innovation and competition in domain registration services, the decision to launch these coming new gTLD application rounds followed a detailed and lengthy consultation process with all constituencies of the global Internet community.

Any public or private sector organization can apply to create and operate a new gTLD. However the process is not like simply registering or buying a second-level domain name. Instead, the application process is to evaluate and select candidates capable of running a registry, a business that manages top level domains such as, for example, .COM or .INFO. Any successful applicant will need to meet published operational and technical criteria in order to preserve Internet stability and interoperability.

### *I. Principles of the Technical and Financial New gTLD Evaluation Criteria*

- Principles of conservatism. This is the first round of what is to be an ongoing process for the introduction of new TLDs, including Internationalized Domain Names. Therefore, the criteria in this round require applicants to provide a thorough and thoughtful analysis of the technical requirements to operate a registry and the proposed business model.
- The criteria and evaluation should be as objective as possible.
  - With that goal in mind, an important objective of the new TLD process is to diversify the namespace, with different registry business models and target audiences. In some cases, criteria that are objective, but that ignore the differences in business models and target audiences of new registries, will tend to make the process exclusionary. For example, the business model for a registry targeted to a small community need not possess the same robustness in funding and technical infrastructure as a registry intending to compete with large gTLDs. Therefore purely objective criteria such as a requirement for a certain amount of cash on hand will not provide for the flexibility to consider different business models. The process must provide for an objective evaluation framework, but allow for adaptation according to the differing models applicants will present. Within that framework, applicant responses will be evaluated against the criteria in light of the proposed model.
  - Therefore the criteria should be flexible: able to scale with the overall business approach, providing that the planned approach is consistent and coherent, and can withstand highs and lows.

- Criteria can be objective in areas of registrant protection, for example:
  - Providing for funds to continue operations in the event of a registry failure.
  - Adherence to data escrow, registry failover, and continuity planning requirements.
- The evaluation must strike the correct balance between establishing the business and technical competence of the applicant to operate a registry (to serve the interests of registrants), while not asking for the detailed sort of information or making the judgment that a venture capitalist would. ICANN is not seeking to certify business success but instead seeks to encourage innovation while providing certain safeguards for registrants.
- New registries must be added in a way that maintains DNS stability and security. Therefore, ICANN asks several questions so that the applicant can demonstrate an understanding of the technical requirements to operate a registry. ICANN will ask the applicant to demonstrate actual operational technical compliance prior to delegation. This is in line with current prerequisites for the delegation of a TLD.
- Registrant protection is emphasized in both the criteria and the scoring. Examples of this include asking the applicant to:
  - Plan for the occurrence of contingencies and registry failure by putting in place financial resources to fund the ongoing resolution of names while a replacement operator is found or extended notice can be given to registrants,
  - Demonstrate a capability to understand and plan for business contingencies to afford some protections through the marketplace,
  - Adhere to DNS stability and security requirements as described in the technical section, and
  - Provide access to the widest variety of services.

## *II. Aspects of the Questions Asked in the Application and Evaluation Criteria*

The technical and financial questions are intended to inform and guide the applicant in aspects of registry start-up and operation. The established registry operator should find the questions straightforward while inexperienced applicants should find them a natural part of planning.

Evaluation and scoring (detailed below) will emphasize:

- How thorough are the answers? Are they well thought through and do they provide a sufficient basis for evaluation?
- Demonstration of the ability to operate and fund the registry on an ongoing basis:
  - Funding sources to support technical operations in a manner that ensures stability and security and supports planned expenses,
  - Resilience and sustainability in the face of ups and downs, anticipation of contingencies,
  - Funding to carry on operations in the event of failure.

- Demonstration that the technical plan will likely deliver on best practices for a registry and identification of aspects that might raise DNS stability and security issues.
- Ensures plan integration, consistency and compatibility (responses to questions are not evaluated individually but in comparison to others):
  - Funding adequately covers technical requirements,
  - Funding covers costs,
  - Risks are identified and addressed, in comparison to other aspects of the plan.

### *III. Scoring*

#### Evaluation

- The questions, criteria, scoring and evaluation methodology are to be conducted in accordance with the principles described earlier in section I. With that in mind, globally diverse evaluation panelists will staff evaluation panels. The diversity of evaluators and access to experts in all regions of the world will ensure application evaluations take into account cultural, technical and business norms in the regions from which applications originate.
- Evaluation teams will consist of two independent panels. One will evaluate the applications against the financial criteria. The other will evaluate the applications against the technical & operational criteria. Given the requirement that technical and financial planning be well integrated, the panels will work together and coordinate information transfer where necessary. Other relevant experts (e.g., technical, audit, legal, insurance, finance) in pertinent regions will provide advice as required.
- Precautions will be taken to ensure that no member of the Evaluation Teams will have any interest or association that may be viewed as a real or potential conflict of interest with an applicant or application. All members must adhere to the Code of Conduct and Conflict of Interest guidelines that are found in Module 2.
- Communications between the evaluation teams and the applicants will be through an online interface. During the evaluation, evaluators may pose a set of clarifying questions to an applicant, to which the applicant may respond through the interface.

Confidentiality: ICANN will post applications after the close of the application submission period. The application form notes which parts of the application will be posted.

#### Scoring

- Responses will be evaluated against each criterion. A score will be assigned according to the scoring schedule linked to each question or set of questions. In several questions, 1 point is the maximum score that may be awarded. In several other questions, 2 points are awarded for a response that exceeds requirements, 1 point is awarded for a response that meets requirements and 0 points are awarded for a response that fails to meet requirements. Each question must receive at least a score of "1," making each a "pass/fail" question.
- In the Continuity question in the financial section(see Question #50), up to 3 points are awarded if an applicant provides, at the application stage, a financial instrument that will guarantee ongoing registry operations in the event of a business failure. This extra

point can serve to guarantee passing the financial criteria for applicants who score the minimum passing score for each of the individual criteria. The purpose of this weighting is to reward applicants who make early arrangements for the protection of registrants and to accept relatively riskier business plans where registrants are protected.

- There are 21 Technical & Operational questions. Each question has a criterion and scoring associated with it. The scoring for each is 0, 1, or 2 points as described above. One of the questions (IDN implementation) is optional. Other than the optional questions, all Technical & Operational criteria must be scored a 1 or more or the application will fail the evaluation.
- The total technical score must be equal to or greater than 22 for the application to pass. That means the applicant can pass by:
  - Receiving a 1 on all questions, including the optional question, and a 2 on at least one mandatory question; or
  - Receiving a 1 on all questions, excluding the optional question and a 2 on at least two mandatory questions.

This scoring methodology requires a minimum passing score for each question and a slightly higher average score than the per question minimum to pass.

- There are six Financial questions and six sets of criteria that are scored by rating the answers to one or more of the questions. For example, the question concerning registry operation costs requires consistency between the technical plans (described in the answers to the Technical & Operational questions) and the costs (described in the answers to the costs question).
- The scoring for each of the Financial criteria is 0, 1 or 2 points as described above with the exception of the Continuity question, for which up to 3 points are possible. All questions must receive at least a 1 or the application will fail the evaluation.
- The total financial score on the six criteria must be 8 or greater for the application to pass. That means the applicant can pass by:
  - Scoring a 3 on the continuity criteria, or
  - Scoring a 2 on any two financial criteria.
- Applications that do not pass Initial Evaluation can enter into an extended evaluation process as described in Module 2. The scoring is the same.

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
Applicant Information	1	Full legal name of the Applicant (the established entity that would enter into a Registry Agreement with ICANN)	Y	Responses to Questions 1 - 12 are required for a complete application. Responses are not scored.			
	2	Address of the principal place of business of the Applicant. This address will be used for contractual purposes. No Post Office boxes are allowed.	Y				
	3	Phone number for the Applicant's principal place of business.	Y				
	4	Fax number for the Applicant's principal place of business.	Y				
	5	Website or URL, if applicable.	Y				
Primary Contact for this Application	6	Name	Y	The primary contact will receive all communications regarding the application. Either the primary or the secondary contact may respond. In the event of a conflict, the communication received from the primary contact will be taken as authoritative. Both contacts listed should also be prepared to receive inquiries from the public.			
		Title	Y				
		Address	Y				
		Phone number	Y				
		Fax number	Y				
		Email address	Y				
Secondary Contact for this Application	7	Name	Y	The secondary contact will be copied on all communications regarding the application. Either the primary or the secondary contact may respond.			
		Title	Y				
		Address	Y				
		Phone number	Y				
		Fax number	Y				
		Email address	Y				
Proof of Legal Establishment	8	(a) Legal form of the Applicant. (e.g., partnership, corporation, non-profit institution).	Y				

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		(b) State the specific national or other jurisdiction that defines the type of entity identified in 8(a).	Y	In the event of questions regarding proof of establishment, the applicant may be asked for additional details, such as the specific national or other law applying to this type of entity			
		(c) Attach evidence of the applicant's establishment as the type of entity identified in Question 8(a) above, in accordance with the applicable laws identified in Question 8(b).	Y	Applications without valid proof of legal establishment will not be evaluated further.			
	9	(a) If the applying entity is publicly traded, provide the exchange and symbol.	Y				
		(b) If the applying entity is a subsidiary, provide the parent company.	Y				
		(c) If the applying entity is a joint venture, list all joint venture partners.	Y				
	10	Business ID, Tax ID, VAT registration number, or equivalent of the Applicant.	N				
<b>Applicant Background</b>	11	(a) Enter the full name, contact information (permanent residence), and position of all directors (i.e., members of the applicant's Board of Directors, if applicable).	Partial	<p>Applicants should be aware that the names and positions of the individuals listed in response to this question will be published as part of the application. The contact information listed for individuals is for identification purposes only and will not be published as part of the application.</p> <p>Background checks may be conducted on individuals named in the applicant's response to question 11. Any material misstatement or misrepresentation (or omission of material information) may cause the application to be rejected.</p> <p>The applicant certifies that it has obtained permission for the posting of the names and positions of individuals included in this application.</p>			
		(b) Enter the full name, contact information (permanent residence), and position of all officers and partners. Officers are high-level management officials of a corporation or business, for example, a CEO, vice president, secretary, chief financial officer. Partners would be listed in the context of a partnership or other such form of legal entity.	Partial				

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		(c) Enter the full name, contact information (permanent residence of individual or principal place of business of entity) and position of all shareholders holding at least 15% of shares, and percentage held by each.	Partial				
		(d) For an applying entity that does not have directors, officers, partners, or shareholders, enter the full name, contact information (permanent residence of individual or principal place of business of entity) and position of all individuals having overall legal or executive responsibility for the applying entity.	Partial				
		<p>(e) Indicate whether the applicant or any of the individuals named above:</p> <ul style="list-style-type: none"> <li>i. within the past ten years, has been convicted of any crime related to financial or corporate governance activities, or has been judged by a court to have committed fraud or breach of fiduciary duty, or has been the subject of a judicial determination that is the substantive equivalent of any of these;</li> <li>ii. within the past ten years, has been disciplined by any government or industry regulatory body for conduct involving dishonesty or misuse of funds of others;</li> <li>iii. within the past ten years has been convicted of any willful tax-related fraud or willful evasion of tax liabilities;</li> <li>iv. within the past ten years has been convicted of perjury, forswearing, failing to cooperate with a law enforcement investigation, or making false statements to a law enforcement agency or representative;</li> <li>v. has ever been convicted of any crime involving the use of computers, telephony systems, telecommunications or the Internet to facilitate the commission of crimes;</li> <li>vi. has ever been convicted of any crime involving the use of a weapon, force, or the threat of force;</li> <li>vii. has ever been convicted of any violent or sexual offense victimizing children, the elderly, or</li> </ul>	N	ICANN may deny an otherwise qualified application based on the background screening process. See section 1.2.1 of the guidebook.			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>individuals with disabilities;</p> <p>viii. has ever been convicted of the illegal sale, manufacture, or distribution of pharmaceutical drugs, or been convicted or successfully extradited for any offense described in Article 3 of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988;</p> <p>ix. has ever been convicted or successfully extradited for any offense described in the United Nations Convention against Transnational Organized Crime (all Protocols);</p> <p>x. has been convicted of aiding, abetting, facilitating, enabling, conspiring to commit, or failing to report any of the listed crimes within the respective timeframes specified above;</p> <p>xi. has entered a guilty plea as part of a plea agreement or has a court case in any jurisdiction with a disposition of Adjudicated Guilty or Adjudication Withheld (or regional equivalents) for any of the listed crimes within the respective timeframes listed above;</p> <p>xii. is the subject of a disqualification imposed by ICANN and in effect at the time of this application.</p> <p>If any of the above events have occurred, please provide details.</p>					
		<p>(f) Indicate whether the applicant or any of the individuals named above have been involved in any decisions indicating that the applicant or individual named in the application was engaged in cybersquatting, as defined in the Uniform Domain Name Dispute Resolution Policy (UDRP), Anti-cybersquatting Consumer Protection Act (ACPA), or other equivalent legislation, or was engaged in reverse domain name hijacking under the UDRP or bad faith or reckless disregard under the ACPA or equivalent legislation.</p>	N	<p>ICANN may deny an otherwise qualified application based on the background screening process. See section 1.2.1 of the guidebook for details.</p>			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		(g) Disclose whether the applicant or any of the individuals named above has been involved in any administrative or other legal proceeding in which allegations of intellectual property infringement relating to registration or use of a domain name have been made. Provide an explanation related to each such instance.	N	ICANN may deny an otherwise qualified application based on the background screening process. See section 1.2.1 of the guidebook for details.			
		(h) Provide an explanation for any additional background information that may be found concerning the applicant or any individual named in the application, which may affect eligibility, including any criminal convictions not identified above.	N				
<b>Evaluation Fee</b>	12	(a) Enter the confirmation information for payment of the evaluation fee (e.g., wire transfer confirmation number).	N	The evaluation fee is paid in the form of a deposit at the time of user registration, and submission of the remaining amount at the time the full application is submitted. The information in question 12 is required for each payment.			
		(b) Payer name	N				
		(c) Payer address	N				
		(d) Wiring bank	N				
		(e) Bank address	N				
		(f) Wire date	N				
<b>Applied-for gTLD string</b>	13	Provide the applied-for gTLD string. If applying for an IDN, provide the U-label.	Y	Responses to Questions 13-17 are not scored, but are used for database and validation purposes.  The U-label is an IDNA-valid string of Unicode characters, including at least one non-ASCII character.			
	14	(a) If applying for an IDN, provide the A-label (beginning with "xn--").	Y				
		(b) If an IDN, provide the meaning, or restatement of the string in English, that is, a description of the literal meaning of the string in the opinion of the applicant.	Y				

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		(c) If an IDN, provide the language of the label (both in English and as referenced by ISO-639-1).	Y				
		(d) If an IDN, provide the script of the label (both in English and as referenced by ISO 15924).	Y				
		(e) If an IDN, list all code points contained in the U-label according to Unicode form.	Y	For example, the string "HELLO" would be listed as U+0048 U+0065 U+006C U+006C U+006F.			
	15	(a) If an IDN, upload IDN tables for the proposed registry. An IDN table must include: <ol style="list-style-type: none"> <li>1. the applied-for gTLD string relevant to the tables,</li> <li>2. the script or language designator (as defined in BCP 47),</li> <li>3. table version number,</li> <li>4. effective date (DD Month YYYY), and</li> <li>5. contact name, email address, and phone number.</li> </ol> <p>Submission of IDN tables in a standards-based format is encouraged.</p>	Y	In the case of an application for an IDN gTLD, IDN tables must be submitted for the language or script for the applied-for gTLD string. IDN tables must also be submitted for each language or script in which the applicant intends to offer IDN registrations at the second level.			
		(b) Describe the process used for development of the IDN tables submitted, including consultations and sources used.	Y				
		(c) List any variants to the applied-for gTLD string according to the relevant IDN tables.	Y	Variant TLD strings will not be delegated as a result of this application. Variant strings will be checked for consistency and, if the application is approved, will be entered on a Declared IDN Variants List to allow for future allocation once a variant management mechanism is established for the top level. Inclusion of variant TLD strings in this application is for information only and confers no right or claim to these strings upon the applicant.			
	16	Describe the applicant's efforts to ensure that there are no known operational or rendering problems concerning the applied-for gTLD string. If such issues are known, describe steps that will be taken to mitigate these issues in software and other applications.	Y				
	17	<b>OPTIONAL.</b> Provide a representation of the label according to the International Phonetic Alphabet ( <a href="http://www.langsci.ucl.ac.uk/ipa/">http://www.langsci.ucl.ac.uk/ipa/</a> ).	Y	If provided, this information will be used as a guide to ICANN in communications regarding the application.			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
Mission/Purpose	18	(a) Describe the mission/purpose of your proposed gTLD.	Y	<p>The information gathered in response to Question 18 is intended to inform the post-launch review of the New gTLD Program, from the perspective of assessing the relative costs and benefits achieved in the expanded gTLD space.</p> <p>For the application to be considered complete, answers to this section must be fulsome and sufficiently quantitative and detailed to inform future study on plans vs. results.</p> <p>The New gTLD Program will be reviewed, as specified in section 9.3 of the Affirmation of Commitments. This will include consideration of the extent to which the introduction or expansion of gTLDs has promoted competition, consumer trust and consumer choice, as well as effectiveness of (a) the application and evaluation process, and (b) safeguards put in place to mitigate issues involved in the introduction or expansion.</p> <p>The information gathered in this section will be one source of input to help inform this review. This information is not used as part of the evaluation or scoring of the application, except to the extent that the information may overlap with questions or evaluation areas that are scored.</p> <p>An applicant wishing to designate this application as community-based should ensure that these responses are consistent with its responses for question 20 below.</p>			
		<p>(b) How do you expect that your proposed gTLD will benefit registrants, Internet users, and others? Answers should address the following points:</p> <ul style="list-style-type: none"> <li>i. What is the goal of your proposed gTLD in terms of areas of specialty, service levels, or reputation?</li> <li>ii. What do you anticipate your proposed gTLD will add to the current space, in terms of</li> </ul>	Y				

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>competition, differentiation, or innovation?</p> <p>iii. What goals does your proposed gTLD have in terms of user experience?</p> <p>iv. Provide a complete description of the applicant's intended registration policies in support of the goals listed above.</p> <p>v. Will your proposed gTLD impose any measures for protecting the privacy or confidential information of registrants or users? If so, please describe any such measures.</p> <p>vi. Describe whether and in what ways outreach and communications will help to achieve your projected benefits.</p>					
	18	<p>(c) What operating rules will you adopt to eliminate or minimize social costs (e.g., time or financial resource costs, as well as various types of consumer vulnerabilities)? What other steps will you take to minimize negative consequences/costs imposed upon consumers? Answers should address the following points:</p> <p>i. How will multiple applications for a particular domain name be resolved, for example, by auction or on a first-come/first-serve basis?</p> <p>ii. Explain any cost benefits for registrants you intend to implement (e.g., advantageous pricing, introductory discounts, bulk registration discounts).</p> <p>iii. Note that the Registry Agreement requires that registrars be offered the option to obtain initial domain name registrations for periods of one to ten years at the discretion of the registrar, but no greater than ten years. Additionally, the Registry</p>	Y				

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		Agreement requires advance written notice of price increases. Do you intend to make contractual commitments to registrants regarding the magnitude of price escalation? If so, please describe your plans.					
Community-based Designation	19	Is the application for a community-based TLD?	Y	<p>There is a presumption that the application is a standard application (as defined in the Applicant Guidebook) if this question is left unanswered.</p> <p>The applicant's designation as standard or community-based cannot be changed once the application is submitted.</p>			
	20	(a) Provide the name and full description of the community that the applicant is committing to serve. In the event that this application is included in a community priority evaluation, it will be scored based on the community identified in response to this question. The name of the community does not have to be formally adopted for the application to be designated as community-based.	Y	<p>Descriptions should include:</p> <ul style="list-style-type: none"> <li>• How the community is delineated from Internet users generally. Such descriptions may include, but are not limited to, the following: membership, registration, or licensing processes, operation in a particular industry, use of a language.</li> <li>• How the community is structured and organized. For a community consisting of an alliance of groups, details about the constituent parts are required.</li> <li>• When the community was established, including the date(s) of formal organization, if any, as well as a description of community activities to date.</li> <li>• The current estimated size of the community, both as to membership and geographic extent.</li> </ul>		<p>Responses to Question 20 will be regarded as firm commitments to the specified community and reflected in the Registry Agreement, provided the application is successful.</p> <p>Responses are not scored in the Initial Evaluation. Responses may be scored in a community priority evaluation, if applicable. Criteria and scoring methodology for the community priority evaluation are described in Module 4 of the Applicant Guidebook.</p>	
		(b) Explain the applicant's relationship to the community identified in 20(a).	Y	<p>Explanations should clearly state:</p> <ul style="list-style-type: none"> <li>• Relations to any community organizations.</li> <li>• Relations to the community and its constituent parts/groups.</li> <li>• Accountability mechanisms of the applicant to the community.</li> </ul>			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		(c) Provide a description of the community-based purpose of the applied-for gTLD.	Y	Descriptions should include: <ul style="list-style-type: none"> <li>• Intended registrants in the TLD.</li> <li>• Intended end-users of the TLD.</li> <li>• Related activities the applicant has carried out or intends to carry out in service of this purpose.</li> <li>• Explanation of how the purpose is of a lasting nature.</li> </ul>			
		(d) Explain the relationship between the applied-for gTLD string and the community identified in 20(a).	Y	Explanations should clearly state: <ul style="list-style-type: none"> <li>• relationship to the established name, if any, of the community.</li> <li>• relationship to the identification of community members.</li> <li>• any connotations the string may have beyond the community.</li> </ul>			
		(e) Provide a complete description of the applicant's intended registration policies in support of the community-based purpose of the applied-for gTLD. Policies and enforcement mechanisms are expected to constitute a coherent set.	Y	Descriptions should include proposed policies, if any, on the following: <ul style="list-style-type: none"> <li>• Eligibility: who is eligible to register a second-level name in the gTLD, and how will eligibility be determined.</li> <li>• Name selection: what types of second-level names may be registered in the gTLD.</li> <li>• Content/Use: what restrictions, if any, the registry operator will impose on how a registrant may use its registered name.</li> <li>• Enforcement: what investigation practices and mechanisms exist to enforce the policies above, what resources are allocated for enforcement, and what appeal mechanisms are available to registrants.</li> </ul>			
		(f) Attach any written endorsements for the application from established institutions representative of the community identified in 20(a). An applicant may submit written endorsements by multiple institutions, if relevant to the community.	Y	At least one such endorsement is required for a complete application. The form and content of the endorsement are at the discretion of the party providing the endorsement; however, the letter must identify the applied-for gTLD string and the applying entity, include an express statement support for the application, and the supply the contact information of the entity providing the endorsement.			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
				Endorsements from institutions not mentioned in the response to 20(b) should be accompanied by a clear description of each such institution's relationship to the community.			
Geographic Names	21	(a) Is the application for a geographic name?	Y	<p>An applied-for gTLD string is considered a geographic name requiring government support if it is: (a) the capital city name of a country or territory listed in the ISO 3166-1 standard; (b) a city name, where it is clear from statements in the application that the applicant intends to use the gTLD for purposes associated with the city name; (c) a sub-national place name listed in the ISO 3166-2 standard; or (d) a name listed as a UNESCO region or appearing on the "Composition of macro geographic (continental) or regions, geographic sub-regions, and selected economic and other groupings" list. See Module 2 for complete definitions and criteria.</p> <p>An application for a country or territory name, as defined in the Applicant Guidebook, will not be approved.</p>			
		(b) If a geographic name, attach documentation of support or non-objection from all relevant governments or public authorities.	N	See the documentation requirements in Module 2 of the Applicant Guidebook.			
Protection of Geographic Names	22	Describe proposed measures for protection of geographic names at the second and other levels in the applied-for gTLD. This should include any applicable rules and procedures for reservation and/or release of such names.	Y	<p>Applicants should consider and describe how they will incorporate Governmental Advisory Committee (GAC) advice in their management of second-level domain name registrations. See "Principles regarding New gTLDs" at <a href="http://gac.icann.org/important-documents">http://gac.icann.org/important-documents</a>.</p> <p>For reference, applicants may draw on existing methodology developed for the reservation and release of country names in the .INFO top-level domain. See <a href="http://gac.icann.org/system/files/dotinfocircular_0.pdf">http://gac.icann.org/system/files/dotinfocircular_0.pdf</a>.</p> <p>Proposed measures will be posted for public comment as part of the application. However, note that procedures for release of geographic names at the second level</p>			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
				must be separately approved according to Specification 5 of the Registry Agreement.			
Registry Services	23	<p>Provide name and full description of all the Registry Services to be provided. Descriptions should include both technical and business components of each proposed service, and address any potential security or stability concerns.</p> <p>The following registry services are customary services offered by a registry operator:</p> <ul style="list-style-type: none"> <li>A. Receipt of data from registrars concerning registration of domain names and name servers.</li> <li>B. Dissemination of TLD zone files.</li> <li>C. Dissemination of contact or other information concerning domain name registrations (Whois service).</li> <li>D. Internationalized Domain Names, where offered.</li> <li>E. DNS Security Extensions (DNSSEC).</li> </ul> <p>The applicant must describe whether any of these registry services are intended to be offered in a manner unique to the TLD.</p> <p>Additional proposed registry services that are unique to the registry must also be described.</p>	Y	<p>Registry Services are defined as the following: (1) operations of the Registry critical to the following tasks: (i) the receipt of data from registrars concerning registrations of domain names and name servers; (ii) provision to registrars of status information relating to the zone servers for the TLD; (iii) dissemination of TLD zone files; (iv) operation of the Registry zone servers; and (v) dissemination of contact and other information concerning domain name server registrations in the TLD as required by the Registry Agreement; and (2) other products or services that the Registry Operator is required to provide because of the establishment of a Consensus Policy; (3) any other products or services that only a Registry Operator is capable of providing, by reason of its designation as the Registry Operator. A full definition of Registry Services can be found at <a href="http://www.icann.org/en/registries/rsep/rsep.html">http://www.icann.org/en/registries/rsep/rsep.html</a>.</p> <p>Security: For purposes of this Applicant Guidebook, an effect on security by the proposed Registry Service means (1) the unauthorized disclosure, alteration, insertion or destruction of Registry Data, or (2) the unauthorized access to or disclosure of information or resources on the Internet by systems operating in accordance with applicable standards.</p> <p>Stability: For purposes of this Applicant Guidebook, an effect on stability shall mean that the proposed Registry Service (1) is not compliant with applicable relevant standards that are authoritative and published by a well-established, recognized and authoritative standards body, such as relevant Standards-Track or Best Current Practice RFCs sponsored by the IETF, or (2) creates a condition that adversely affects</p>		<p>Responses are not scored. A preliminary assessment will be made to determine if there are potential security or stability issues with any of the applicant's proposed Registry Services. If any such issues are identified, the application will be referred for an extended review. See the description of the Registry Services review process in Module 2 of the Applicant Guidebook. Any information contained in the application may be considered as part of the Registry Services review. If its application is approved, applicant may engage in only those registry services defined in the application, unless a new request is submitted to ICANN in accordance with the Registry Agreement.</p>	

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
				the throughput, response time, consistency or coherence of responses to Internet servers or end systems, operating in accordance with applicable relevant standards that are authoritative and published by a well-established, recognized and authoritative standards body, such as relevant Standards-Track or Best Current Practice RFCs and relying on Registry Operator's delegation information or provisioning.			
Demonstration of Technical & Operational Capability (External)	24	<p>Shared Registration System (SRS) Performance: describe</p> <ul style="list-style-type: none"> <li>the plan for operation of a robust and reliable SRS. SRS is a critical registry function for enabling multiple registrars to provide domain name registration services in the TLD. SRS must include the EPP interface to the registry, as well as any other interfaces intended to be provided, if they are critical to the functioning of the registry. Please refer to the requirements in Specification 6 (section 1.2) and Specification 10 (SLA Matrix) attached to the Registry Agreement; and</li> <li>resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul> <p>A complete answer should include, but is not limited to:</p> <ul style="list-style-type: none"> <li>A high-level SRS system description;</li> <li>Representative network diagram(s);</li> </ul>	Y	<p>The questions in this section (24-44) are intended to give applicants an opportunity to demonstrate their technical and operational capabilities to run a registry. In the event that an applicant chooses to outsource one or more parts of its registry operations, the applicant should still provide the full details of the technical arrangements.</p> <p>Note that the resource plans provided in this section assist in validating the technical and operational plans as well as informing the cost estimates in the Financial section below.</p> <p>Questions 24-30(a) are designed to provide a description of the applicant's intended technical and operational approach for those registry functions that are outward-facing, i.e., interactions with registrars, registrants, and various DNS users. Responses to these questions will be published to allow review by affected parties.</p>	0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> <li>a plan for operating a robust and reliable SRS, one of the five critical registry functions;</li> <li>scalability and performance consistent with the overall business approach, and planned size of the registry;</li> <li>a technical plan that is adequately resourced in the planned costs detailed in the financial section; and</li> <li>evidence of compliance with Specification 6 (section 1.2) to the Registry Agreement.</li> </ol>	<p><b>1 - meets requirements:</b> Response includes</p> <ol style="list-style-type: none"> <li>An adequate description of SRS that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</li> <li>Details of a well-developed plan to operate a robust and reliable SRS;</li> <li>SRS plans are sufficient to result in compliance with Specification 6 and Specification 10 to the Registry Agreement;</li> <li>SRS is consistent with the technical, operational and financial approach described in the application; and</li> <li>Demonstrates that adequate technical resources are already on hand, or committed or readily available to carry out this function.</li> </ol> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<ul style="list-style-type: none"> <li>• Number of servers;</li> <li>• Description of interconnectivity with other registry systems;</li> <li>• Frequency of synchronization between servers; and</li> <li>• Synchronization scheme (e.g., hot standby, cold standby).</li> </ul> <p>A complete answer is expected to be approximately 2-5 pages.</p>					
	25	<p>Extensible Provisioning Protocol (EPP): provide a detailed description of the interface with registrars, including how the applicant will comply with EPP in RFCs 3735 (if applicable), and 5730-5734.</p> <p>If intending to provide proprietary EPP extensions, provide documentation consistent with RFC 3735, including the EPP templates and schemas that will be used.</p> <p>Describe resourcing plans (number and description of personnel roles allocated to this area).</p> <p>A complete answer is expected to be approximately 2 to 5 pages. If there are proprietary EPP extensions, a complete answer is also expected to be 2 to 5 pages per EPP extension.</p>	Y		0-1	<p>Complete answer demonstrates:</p> <ul style="list-style-type: none"> <li>(1) complete knowledge and understanding of this aspect of registry technical requirements;</li> <li>(2) a technical plan scope/scale consistent with the overall business approach and planned size of the registry; and</li> <li>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section;</li> <li>(4) ability to comply with relevant RFCs;</li> <li>(5) if applicable, a well-documented implementation of any proprietary EPP extensions; and</li> <li>(6) if applicable, how proprietary EPP extensions are consistent with the registration lifecycle as described in Question 27.</li> </ul>	<p><b>1 - meets requirements:</b> Response includes</p> <ul style="list-style-type: none"> <li>(1) Adequate description of EPP that substantially demonstrates the applicant's capability and knowledge required to meet this element;</li> <li>(2) Sufficient evidence that any proprietary EPP extensions are compliant with RFCs and provide all necessary functionalities for the provision of registry services;</li> <li>(3) EPP interface is consistent with the technical, operational, and financial approach as described in the application; and</li> <li>(4) Demonstrates that technical resources are already on hand, or committed or readily available.</li> </ul> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	26	<p>Whois: describe</p> <ul style="list-style-type: none"> <li>• how the applicant will comply with Whois specifications for data objects, bulk access, and lookups as defined in Specifications 4 and 10 to the Registry Agreement;</li> <li>• how the Applicant's Whois service will comply with RFC 3912; and</li> <li>• resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul> <p>A complete answer should include, but is not limited to:</p> <ul style="list-style-type: none"> <li>• A high-level Whois system description;</li> <li>• Relevant network diagram(s);</li> <li>• IT and infrastructure resources (e.g., servers, switches, routers and other components);</li> <li>• Description of interconnectivity with other registry systems; and</li> <li>• Frequency of synchronization between servers.</li> </ul> <p>To be eligible for a score of 2, answers must also include:</p> <ul style="list-style-type: none"> <li>• Provision for Searchable Whois capabilities; and</li> <li>• A description of potential forms of abuse of this feature, how these risks will be mitigated, and the basis for these descriptions.</li> </ul> <p>A complete answer is expected to be approximately 2 to 5 pages.</p>	Y	<p>The Registry Agreement (Specification 4) requires provision of Whois lookup services for all names registered in the TLD. This is a minimum requirement. Provision for Searchable Whois as defined in the scoring column is a requirement for achieving a score of 2 points.</p>	0-2	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of this aspect of registry technical requirements, (one of the five critical registry functions);</p> <p>(2) a technical plan scope/scale consistent with the overall business approach and planned size of the registry;</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section;</p> <p>(4) ability to comply with relevant RFCs;</p> <p>(5) evidence of compliance with Specifications 4 and 10 to the Registry Agreement; and</p> <p>(6) if applicable, a well-documented implementation of Searchable Whois.</p>	<p><b>2 – exceeds requirements:</b> Response meets all the attributes for a score of 1 and includes:</p> <p>(1) A Searchable Whois service: Whois service includes web-based search capabilities by domain name, registrant name, postal address, contact names, registrar IDs, and Internet Protocol addresses without arbitrary limit. Boolean search capabilities may be offered. The service shall include appropriate precautions to avoid abuse of this feature (e.g., limiting access to legitimate authorized users), and the application demonstrates compliance with any applicable privacy laws or policies.</p> <p><b>1 - meets requirements:</b> Response includes</p> <p>(1) adequate description of Whois service that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(2) Evidence that Whois services are compliant with RFCs, Specifications 4 and 10 to the Registry Agreement, and any other contractual requirements including all necessary functionalities for user interface;</p> <p>(3) Whois capabilities consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(4) demonstrates an adequate level of resources that are already on hand or readily available to carry out this function.</p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	27	<p>Registration Life Cycle: provide a detailed description of the proposed registration lifecycle for domain names in the proposed gTLD. The description must:</p> <ul style="list-style-type: none"> <li>explain the various registration states as well as the criteria and procedures that are used to change state;</li> <li>describe the typical registration lifecycle of create/update/delete and all intervening steps such as pending, locked, expired, and transferred that may apply;</li> <li>clearly explain any time elements that are involved - for instance details of add-grace or redemption grace periods, or notice periods for renewals or transfers; and</li> <li>describe resourcing plans for this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul> <p>The description of the registration lifecycle should be supplemented by the inclusion of a state diagram, which captures definitions, explanations of trigger points, and transitions from state to state.</p> <p>If applicable, provide definitions for aspects of the registration lifecycle that are not covered by standard EPP RFCs.</p> <p>A complete answer is expected to be approximately 3 to 5 pages.</p>	Y		0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> <li>complete knowledge and understanding of registration lifecycles and states;</li> <li>consistency with any specific commitments made to registrants as adapted to the overall business approach for the proposed gTLD; and</li> <li>the ability to comply with relevant RFCs.</li> </ol>	<p><b>1 - meets requirements:</b> Response includes</p> <ol style="list-style-type: none"> <li>An adequate description of the registration lifecycle that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</li> <li>Details of a fully developed registration life cycle with definition of various registration states, transition between the states, and trigger points;</li> <li>A registration lifecycle that is consistent with any commitments to registrants and with technical, operational, and financial plans described in the application; and</li> <li>Demonstrates an adequate level of resources that are already on hand or committed or readily available to carry out this function.</li> </ol> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1.</p>
	28	<p>Abuse Prevention and Mitigation: Applicants should describe the proposed policies and procedures to minimize abusive registrations and other activities that have a negative impact on Internet users. A complete answer should include, but is not limited to:</p> <ul style="list-style-type: none"> <li>An implementation plan to establish and publish on its website a single abuse point of contact responsible for addressing matters requiring expedited attention and providing a timely response to abuse complaints concerning all names registered in the TLD through all registrars of record, including those involving a reseller;</li> </ul>	Y	<p>Note that, while orphan glue often supports correct and ordinary operation of the DNS, registry operators will be required to take action to remove orphan glue records (as defined at <a href="http://www.icann.org/en/committees/security/sac048.pdf">http://www.icann.org/en/committees/security/sac048.pdf</a>) when provided with evidence in written form that such records are present in connection with malicious conduct.</p>	0-2	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> <li>Comprehensive abuse policies, which include clear definitions of what constitutes abuse in the TLD, and procedures that will effectively minimize potential for abuse in the TLD;</li> <li>Plans are adequately resourced in the planned costs detailed in the financial section;</li> </ol>	<p><b>2 - exceeds requirements:</b> Response meets all the attributes for a score of 1 and includes:</p> <ol style="list-style-type: none"> <li>Details of measures to promote Whois accuracy, using measures specified here or other measures commensurate in their effectiveness; and</li> <li>Measures from at least one additional area to be eligible for 2 points as described in the question.</li> </ol> <p><b>1 - meets requirements</b> Response includes:</p> <ol style="list-style-type: none"> <li>An adequate description of abuse prevention and mitigation policies</li> </ol>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<ul style="list-style-type: none"> <li>• Policies for handling complaints regarding abuse;</li> <li>• Proposed measures for removal of orphan glue records for names removed from the zone when provided with evidence in written form that the glue is present in connection with malicious conduct (see Specification 6); and</li> <li>• Resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul> <p>To be eligible for a score of 2, answers must include measures to promote Whois accuracy as well as measures from one other area as described below.</p> <ul style="list-style-type: none"> <li>• Measures to promote Whois accuracy (can be undertaken by the registry directly or by registrars via requirements in the Registry-Registrar Agreement (RRA)) may include, but are not limited to:               <ul style="list-style-type: none"> <li>○ Authentication of registrant information as complete and accurate at time of registration. Measures to accomplish this could include performing background checks, verifying all contact information of principals mentioned in registration data, reviewing proof of establishment documentation, and other means.</li> <li>○ Regular monitoring of registration data for accuracy and completeness, employing authentication methods, and establishing policies and procedures to address domain names with inaccurate or incomplete Whois data; and</li> <li>○ If relying on registrars to enforce measures, establishing policies and procedures to ensure compliance, which may include audits, financial incentives, penalties, or other means. Note that the requirements of the RAA</li> </ul> </li> </ul>				(3) Policies and procedures identify and address the abusive use of registered names at startup and on an ongoing basis; and (4) When executed in accordance with the Registry Agreement, plans will result in compliance with contractual requirements.	and procedures that substantially demonstrates the applicant's capabilities and knowledge required to meet this element; (2) Details of well-developed abuse policies and procedures; (3) Plans are sufficient to result in compliance with contractual requirements; (4) Plans are consistent with the technical, operational, and financial approach described in the application, and any commitments made to registrants; and (5) Demonstrates an adequate level of resources that are on hand, committed, or readily available to carry out this function. <b>0 – fails requirements</b> Does not meet all the requirements to score 1.

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>will continue to apply to all ICANN-accredited registrars.</p> <ul style="list-style-type: none"> <li>• A description of policies and procedures that define malicious or abusive behavior, capture metrics, and establish Service Level Requirements for resolution, including service levels for responding to law enforcement requests. This may include rapid takedown or suspension systems and sharing information regarding malicious or abusive behavior with industry partners;</li> <li>• Adequate controls to ensure proper access to domain functions (can be undertaken by the registry directly or by registrars via requirements in the Registry-Registrar Agreement (RRA)) may include, but are not limited to:               <ul style="list-style-type: none"> <li>○ Requiring multi-factor authentication (i.e., strong passwords, tokens, one-time passwords) from registrants to process update, transfers, and deletion requests;</li> <li>○ Requiring multiple, unique points of contact to request and/or approve update, transfer, and deletion requests; and</li> <li>○ Requiring the notification of multiple, unique points of contact when a domain has been updated, transferred, or deleted.</li> </ul> </li> </ul> <p>A complete answer is expected to be approximately 10 to 20 pages.</p>					
	29	<p>Rights Protection Mechanisms: Applicants must describe how their registry will comply with policies and practices that minimize abusive registrations and other activities that affect the legal rights of others, such as the Uniform Domain Name Dispute Resolution Policy (UDRP), Uniform Rapid Suspension (URS) system, and Trademark Claims and Sunrise services at startup.</p> <p>A complete answer should include:</p> <ul style="list-style-type: none"> <li>• A description of how the registry operator will implement safeguards</li> </ul>	Y		0-2	<p>Complete answer describes mechanisms designed to:</p> <p>(1) prevent abusive registrations, and            (2) identify and address the abusive use of registered names on an ongoing basis.</p>	<p><b>2 - exceeds requirements:</b> Response meets all attributes for a score of 1 and includes:</p> <p>(1) Identification of rights protection as a core objective, supported by a well-developed plan for rights protection; and            (2) Mechanisms for providing effective protections that exceed minimum requirements (e.g., RPMs in addition to those required in the registry agreement).</p> <p><b>1 - meets requirements:</b> Response includes</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>against allowing unqualified registrations (e.g., registrations made in violation of the registry’s eligibility restrictions or policies), and reduce opportunities for behaviors such as phishing or pharming. At a minimum, the registry operator must offer a Sunrise period and a Trademark Claims service during the required time periods, and implement decisions rendered under the URS on an ongoing basis; and</p> <ul style="list-style-type: none"> <li>• A description of resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul> <p>To be eligible for a score of 2, answers must also include additional measures specific to rights protection, such as abusive use policies, takedown procedures, registrant pre-verification, or authentication procedures, or other covenants.</p> <p>A complete answer is expected to be approximately 1 to 10 pages.</p>					<p>(1) An adequate description of RPMs that substantially demonstrates the applicant’s capabilities and knowledge required to meet this element;</p> <p>(2) A commitment from the applicant to implement of rights protection mechanisms sufficient to comply with minimum requirements in Specification 7;</p> <p>(3) Plans that are sufficient to result in compliance with contractual requirements;</p> <p>(4) Mechanisms that are consistent with the technical, operational, and financial approach described in the application; and</p> <p>(5) Demonstrates an adequate level of resources that are on hand, committed, or readily available to carry out this function.</p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score a 1.</p>
	30	<p>(a) Security Policy: provide a summary of the security policy for the proposed registry, including but not limited to:</p> <ul style="list-style-type: none"> <li>• indication of any independent assessment reports demonstrating security capabilities, and provisions for periodic independent assessment reports to test security capabilities;</li> <li>• description of any augmented security levels or capabilities commensurate with the nature of the applied for gTLD string, including the identification of any existing international or industry relevant security standards the applicant commits to following (reference site must be provided);</li> <li>• list of commitments made to registrants concerning security levels.</li> </ul> <p>To be eligible for a score of 2, answers must also include:</p>	Y	<p>Criterion 5 calls for security levels to be appropriate for the use and level of trust associated with the TLD string, such as, for example, financial services oriented TLDs. “Financial services” are activities performed by financial institutions, including: 1) the acceptance of deposits and other repayable funds; 2) lending; 3) payment and remittance services; 4) insurance or reinsurance services; 5) brokerage services; 6) investment services and activities; 7) financial leasing; 8) issuance of guarantees and commitments; 9) provision of financial advice; 10) portfolio management and advice; or 11) acting as a financial clearinghouse. Financial services is used as an example only; other strings with exceptional potential to cause harm to consumers would also be expected to deploy appropriate levels of security.</p>	0-2	<p>Complete answer demonstrates:</p> <p>(1) detailed description of processes and solutions deployed to manage logical security across infrastructure and systems, monitoring and detecting threats and security vulnerabilities and taking appropriate steps to resolve them;</p> <p>(2) security capabilities are consistent with the overall business approach and planned size of the registry;</p> <p>(3) a technical plan adequately resourced in the planned costs detailed in the financial section;</p> <p>(4) security measures are consistent with any commitments made to registrants regarding security</p>	<p><b>2 - exceeds requirements:</b> Response meets all attributes for a score of 1 and includes:</p> <p>(1) Evidence of highly developed and detailed security capabilities, with various baseline security levels, independent benchmarking of security metrics, robust periodic security monitoring, and continuous enforcement; and</p> <p>(2) an independent assessment report is provided demonstrating effective security controls are either in place or have been designed, and are commensurate with the applied-for gTLD string. (This could be ISO 27001 certification or other well-established and recognized industry certifications for the registry operation. If new independent standards for demonstration of effective security controls are established, such as the High</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<ul style="list-style-type: none"> <li>Evidence of an independent assessment report demonstrating effective security controls (e.g., ISO 27001).</li> </ul> <p>A summary of the above should be no more than 10 to 20 pages. Note that the complete security policy for the registry is required to be submitted in accordance with 30(b).</p>				<p>levels; and (5) security measures are appropriate for the applied-for gTLD string (For example, applications for strings with unique trust implications, such as financial services-oriented strings, would be expected to provide a commensurate level of security).</p>	<p>Security Top Level Domain (HSTLD) designation, this could also be included.)</p> <p><b>1 - meets requirements:</b> Response includes:</p> <ol style="list-style-type: none"> <li>(1) Adequate description of security policies and procedures that substantially demonstrates the applicant's capability and knowledge required to meet this element;</li> <li>(2) A description of adequate security capabilities, including enforcement of logical access control, threat analysis, incident response and auditing. Ad-hoc oversight and governance and leading practices being followed;</li> <li>(3) Security capabilities consistent with the technical, operational, and financial approach as described in the application, and any commitments made to registrants;</li> <li>(4) Demonstrates that an adequate level of resources are on hand, committed or readily available to carry out this function; and</li> <li>(5) Proposed security measures are commensurate with the nature of the applied-for gTLD string.</li> </ol> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1.</p>
Demonstration of Technical & Operational Capability (Internal)	30	<p>(b) Security Policy: provide the complete security policy and procedures for the proposed registry, including but not limited to:</p> <ul style="list-style-type: none"> <li>system (data, server, application / services) and network access control, ensuring systems are maintained in a secure fashion, including details of how they are monitored, logged and backed up;</li> <li>resources to secure integrity of updates between registry systems and nameservers, and between nameservers, if any;</li> <li>independent assessment reports demonstrating security capabilities (submitted as attachments), if any;</li> <li>provisioning and other measures that</li> </ul>	N	<p>Questions 30(b) – 44 are designed to provide a description of the applicant's intended technical and operational approach for those registry functions that are internal to the infrastructure and operations of the registry. To allow the applicant to provide full details and safeguard proprietary information, responses to these questions will not be published.</p>			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>mitigate risks posed by denial of service attacks;</p> <ul style="list-style-type: none"> <li>• computer and network incident response policies, plans, and processes;</li> <li>• plans to minimize the risk of unauthorized access to its systems or tampering with registry data;</li> <li>• intrusion detection mechanisms, a threat analysis for the proposed registry, the defenses that will be deployed against those threats, and provision for periodic threat analysis updates;</li> <li>• details for auditing capability on all network access;</li> <li>• physical security approach;</li> <li>• identification of department or group responsible for the registry's security organization;</li> <li>• background checks conducted on security personnel;</li> <li>• description of the main security threats to the registry operation that have been identified; and</li> <li>• resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul>					
	31	<p>Technical Overview of Proposed Registry: provide a technical overview of the proposed registry.</p> <p>The technical plan must be adequately resourced, with appropriate expertise and allocation of costs. The applicant will provide financial descriptions of resources in the next section and those resources must be reasonably related to these technical requirements.</p> <p>The overview should include information on the estimated scale of the registry's technical operation, for example, estimates for the number of registration transactions and DNS queries per month should be provided for the first two years of operation.</p>	N	<p>To the extent this answer is affected by the applicant's intent to outsource various registry operations, the applicant should describe these plans (e.g., taking advantage of economies of scale or existing facilities). However, the response must include specifying the technical plans, estimated scale, and geographic dispersion as required by the question.</p>	0-1	<p>Complete answer demonstrates:</p> <ul style="list-style-type: none"> <li>(1) complete knowledge and understanding of technical aspects of registry requirements;</li> <li>(2) an adequate level of resiliency for the registry's technical operations;</li> <li>(3) consistency with planned or currently deployed technical/operational solutions;</li> <li>(4) consistency with the overall business approach and planned size of the</li> </ul>	<p><b>1 - meets requirements:</b> Response includes:</p> <ul style="list-style-type: none"> <li>(1) A description that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</li> <li>(2) Technical plans consistent with the technical, operational, and financial approach as described in the application;</li> <li>(3) Demonstrates an adequate level of resources that are on hand, committed, or readily available to carry out this function.</li> </ul> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1.</p>

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		<p>In addition, the overview should account for geographic dispersion of incoming network traffic such as DNS, Whois, and registrar transactions. If the registry serves a highly localized registrant base, then traffic might be expected to come mainly from one area.</p> <p>This high-level summary should not repeat answers to questions below. Answers should include a visual diagram(s) to highlight dataflows, to provide context for the overall technical infrastructure. Detailed diagrams for subsequent questions should be able to map back to this high-level diagram(s). The visual diagram(s) can be supplemented with documentation, or a narrative, to explain how all of the Technical &amp; Operational components conform.</p> <p>A complete answer is expected to be approximately 5 to 10 pages.</p>				<p>registry;</p> <p>(5) adequate resourcing for technical plan in the planned costs detailed in the financial section; and</p> <p>(6) consistency with subsequent technical questions.</p>	
	32	<p>Architecture: provide documentation for the system and network architecture that will support registry operations for the proposed scale of the registry. System and network architecture documentation must clearly demonstrate the applicant's ability to operate, manage, and monitor registry systems. Documentation should include multiple diagrams or other components including but not limited to:</p> <ul style="list-style-type: none"> <li>• Detailed network diagram(s) showing the full interplay of registry elements, including but not limited to SRS, DNS, Whois, data escrow, and registry database functions;</li> <li>• Network and associated systems necessary to support registry operations, including: <ul style="list-style-type: none"> <li>▪ Anticipated TCP / IP addressing scheme,</li> <li>▪ Hardware (i.e., servers, routers, networking components, virtual machines and key characteristics (CPU and RAM, Disk space, internal network connectivity, and make and model)),</li> <li>▪ Operating system and versions, and</li> <li>▪ Software and applications (with version information) necessary to support registry operations, management, and monitoring</li> </ul> </li> <li>• General overview of capacity planning, including bandwidth allocation plans;</li> <li>• List of providers / carriers; and</li> <li>• Resourcing plans for the initial</li> </ul>	N		0-2	<p>Complete answer demonstrates:</p> <p>(1) detailed and coherent network architecture;</p> <p>(2) architecture providing resiliency for registry systems;</p> <p>(3) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry; and</p> <p>(4) a technical plan that is adequately resourced in the planned costs detailed in the financial section.</p>	<p><b>2 - exceeds requirements:</b> Response meets all attributes for a score of 1 and includes</p> <p>(1) Evidence of highly developed and detailed network architecture that is able to scale well above stated projections for high registration volumes, thereby significantly reducing the risk from unexpected volume surges and demonstrates an ability to adapt quickly to support new technologies and services that are not necessarily envisaged for initial registry startup; and</p> <p>(2) Evidence of a highly available, robust, and secure infrastructure.</p> <p><b>1 - meets requirements:</b> Response includes</p> <p>(1) An adequate description of the architecture that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</p> <p>(2) Plans for network architecture describe all necessary elements;</p> <p>(3) Descriptions demonstrate adequate network architecture providing robustness and security of the</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</p> <p>To be eligible for a score of 2, answers must also include evidence of a network architecture design that greatly reduces the risk profile of the proposed registry by providing a level of scalability and adaptability (e.g., protection against DDoS attacks) that far exceeds the minimum configuration necessary for the expected volume.</p> <p>A complete answer is expected to be approximately 5 to 10 pages.</p>					<p>registry;</p> <p>(4) Bandwidth and SLA are consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(5) Demonstrates an adequate level of resources that are on hand, or committed or readily available to carry out this function.</p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1.</p>
	33	<p>Database Capabilities: provide details of database capabilities including but not limited to:</p> <ul style="list-style-type: none"> <li>• database software;</li> <li>• storage capacity (both in raw terms [e.g., MB, GB] and in number of registrations / registration transactions);</li> <li>• maximum transaction throughput (in total and by type of transaction);</li> <li>• scalability;</li> <li>• procedures for object creation, editing, and deletion, and user and credential management;</li> <li>• high availability;</li> <li>• change management procedures;</li> <li>• reporting capabilities; and</li> <li>• resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul> <p>A registry database data model can be included to provide additional clarity to this response.</p> <p>Note: Database capabilities described should be in reference to registry services and not necessarily related support functions such as Personnel or Accounting, unless such services are inherently intertwined with the delivery of registry services.</p> <p>To be eligible for a score of 2, answers must also include evidence of database capabilities that</p>	N		0-2	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of database capabilities to meet the registry technical requirements;</p> <p>(2) database capabilities consistent with the overall business approach and planned size of the registry; and</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section.</p>	<p><b>2 - exceeds requirements:</b> Response meets all attributes for a score of 1 and includes</p> <p>(1) Highly developed and detailed description of database capabilities that are able to scale well above stated projections for high registration volumes, thereby significantly reducing the risk from unexpected volume surges and demonstrates an ability to adapt quickly to support new technologies and services that are not necessarily envisaged for registry startup; and</p> <p>(2) Evidence of comprehensive database capabilities, including high scalability and redundant database infrastructure, regularly reviewed operational and reporting procedures following leading practices.</p> <p><b>1 - meets requirements:</b> Response includes</p> <p>(1) An adequate description of database capabilities that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</p> <p>(2) Plans for database capabilities describe all necessary elements;</p> <p>(3) Descriptions demonstrate adequate</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>greatly reduce the risk profile of the proposed registry by providing a level of scalability and adaptability that far exceeds the minimum configuration necessary for the expected volume.</p> <p>A complete answer is expected to be approximately 3 to 5 pages.</p>					<p>database capabilities, with database throughput, scalability, and database operations with limited operational governance;</p> <p>(4) Database capabilities are consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(5) Demonstrates that an adequate level of resources that are on hand, or committed or readily available to carry out this function.</p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1.</p>
	34	<p>Geographic Diversity: provide a description of plans for geographic diversity of:</p> <p>a. name servers, and</p> <p>b. operations centers.</p> <p>Answers should include, but are not limited to:</p> <ul style="list-style-type: none"> <li>the intended physical locations of systems, primary and back-up operations centers (including security attributes), and other infrastructure;</li> <li>any registry plans to use Anycast or other topological and geographical diversity measures, in which case, the configuration of the relevant service must be included;</li> <li>resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul> <p>To be eligible for a score of 2, answers must also include evidence of a geographic diversity plan that greatly reduces the risk profile of the proposed registry by ensuring the continuance of all vital business functions (as identified in the applicant's continuity plan in Question 39) in the event of a natural or other disaster) at the principal place of business or point of presence.</p> <p>A complete answer is expected to be approximately 3 to 5 pages.</p>	N		0-2	<p>Complete answer demonstrates:</p> <p>(1) geographic diversity of nameservers and operations centers;</p> <p>(2) proposed geo-diversity measures are consistent with the overall business approach and planned size of the registry; and</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section.</p>	<p><b>2 - exceeds requirements:</b> Response meets all attributes for a score of 1 and includes</p> <p>(1) Evidence of highly developed measures for geo-diversity of operations, with locations and functions to continue all vital business functions in the event of a natural or other disaster at the principal place of business or point of presence; and</p> <p>(2) A high level of availability, security, and bandwidth.</p> <p><b>1 - meets requirements:</b> Response includes</p> <p>(1) An adequate description of Geographic Diversity that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</p> <p>(2) Plans provide adequate geo-diversity of name servers and operations to continue critical registry functions in the event of a temporary outage at the principal place of business or point of presence;</p> <p>(3) Geo-diversity plans are consistent with technical, operational, and financial approach as described in the application; and</p> <p>(4) Demonstrates adequate resources</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
							<p>that are on hand, or committed or readily available to carry out this function.</p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1.</p>
	35	<p>DNS Service: describe the configuration and operation of nameservers, including how the applicant will comply with relevant RFCs.</p> <p>All name servers used for the new gTLD must be operated in compliance with the DNS protocol specifications defined in the relevant RFCs, including but not limited to: 1034, 1035, 1982, 2181, 2182, 2671, 3226, 3596, 3597, 3901, 4343, and 4472.</p> <ul style="list-style-type: none"> <li>• Provide details of the intended DNS Service including, but not limited to: A description of the DNS services to be provided, such as query rates to be supported at initial operation, and reserve capacity of the system. How will these be scaled as a function of growth in the TLD? Similarly, describe how services will scale for name server update method and performance.</li> <li>• RFCs that will be followed – describe how services are compliant with RFCs and if these are dedicated or shared with any other functions (capacity/performance) or DNS zones.</li> <li>• The resources used to implement the services - describe complete server hardware and software. including network bandwidth and addressing plans for servers. Also include resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> <li>• Demonstrate how the system will function - describe how the proposed infrastructure will be able to deliver the performance described in Specification 10 (section 2) attached to the Registry Agreement.</li> </ul>	N	<p>Note that the use of DNS wildcard resource records as described in RFC 4592 or any other method or technology for synthesizing DNS resource records or using redirection within the DNS by the registry is prohibited in the Registry Agreement.</p> <p>Also note that name servers for the new gTLD must comply with IANA Technical requirements for authoritative name servers: <a href="http://www.iana.org/procedures/nameserver-requirements.html">http://www.iana.org/procedures/nameserver-requirements.html</a>.</p>	0-1	<p>Complete answer demonstrates:</p> <p>(1) adequate description of configurations of nameservers and compliance with respective DNS protocol-related RFCs;</p> <p>(2) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry;</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section;</p> <p>(4) evidence of compliance with Specification 6 to the Registry Agreement; and</p> <p>(5) evidence of complete knowledge and understanding of requirements for DNS service, one of the five critical registry functions.</p>	<p><b>1 - meets requirements:</b> Response includes:</p> <p>(1) Adequate description of DNS service that that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(2) Plans are sufficient to result in compliance with DNS protocols (Specification 6, section 1.1) and required performance specifications Specification 10, Service Level Matrix;</p> <p>(3) Plans are consistent with technical, operational, and financial approach as described in the application; and</p> <p>(4) Demonstrates an adequate level of resources that are on hand, or committed or readily available to carry out this function.</p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>Examples of evidence include:</p> <ul style="list-style-type: none"> <li>• Server configuration standard (i.e., planned configuration).</li> <li>• Network addressing and bandwidth for query load and update propagation.</li> <li>• Headroom to meet surges.</li> </ul> <p>A complete answer is expected to be approximately 5 to 10 pages.</p>					
	36	<p>IPv6 Reachability: provide a description of plans for providing IPv6 transport including, but not limited to:</p> <ul style="list-style-type: none"> <li>• How the registry will support IPv6 access to Whois, Web-based Whois and any other Registration Data Publication Service as described in Specification 6 (section 1.5) to the Registry Agreement.</li> <li>• How the registry will comply with the requirement in Specification 6 for having at least two nameservers reachable over IPv6.</li> <li>• List all services that will be provided over IPv6, and describe the IPv6 connectivity and provider diversity that will be used.</li> <li>• Resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul> <p>A complete answer is expected to be approximately 3 to 5 pages.</p>	N	<p>IANA nameserver requirements are available at <a href="http://www.iana.org/procedures/nameserver-requirements.html">http://www.iana.org/procedures/nameserver-requirements.html</a>.</p>	0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> <li>(1) complete knowledge and understanding of this aspect of registry technical requirements;</li> <li>(2) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry;</li> <li>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section; and</li> <li>(4) evidence of compliance with Specification 6 to the Registry Agreement.</li> </ol>	<p><b>1 - meets requirements:</b> Response includes</p> <ol style="list-style-type: none"> <li>(1) Adequate description of IPv6 reachability that substantially demonstrates the applicant's capability and knowledge required to meet this element;</li> <li>(2) A description of an adequate implementation plan addressing requirements for IPv6 reachability, indicating IPv6 reachability allowing IPv6 transport in the network over two independent IPv6 capable networks in compliance to IPv4 IANA specifications, and Specification 10;</li> <li>(3) IPv6 plans consistent with the technical, operational, and financial approach as described in the application; and</li> <li>(4) Demonstrates an adequate level of resources that are on hand, committed or readily available to carry out this function.</li> </ol> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	37	<p>Data Backup Policies &amp; Procedures: provide</p> <ul style="list-style-type: none"> <li>• details of frequency and procedures for backup of data,</li> <li>• hardware, and systems used for backup,</li> <li>• data format,</li> <li>• data backup features,</li> <li>• backup testing procedures,</li> <li>• procedures for retrieval of data/rebuild of database,</li> <li>• storage controls and procedures, and</li> <li>• resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul> <p>A complete answer is expected to be approximately 3 to 5 pages.</p>	N		0-1	<p>Complete answer demonstrates:</p> <p>(1) detailed backup and retrieval processes deployed;</p> <p>(2) backup and retrieval process and frequency are consistent with the overall business approach and planned size of the registry; and</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section.</p>	<p><b>1 - meets requirements:</b> Response includes</p> <p>(1) Adequate description of backup policies and procedures that substantially demonstrate the applicant's capabilities and knowledge required to meet this element;</p> <p>(2) A description of leading practices being or to be followed;</p> <p>(3) Backup procedures consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(4) Demonstrates an adequate level of resources that are on hand, or committed or readily available to carry out this function.</p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score a 1.</p>
	38	<p>Data Escrow: describe</p> <ul style="list-style-type: none"> <li>• how the applicant will comply with the data escrow requirements documented in the Registry Data Escrow Specification (Specification 2 of the Registry Agreement); and</li> <li>• resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul> <p>A complete answer is expected to be approximately 3 to 5 pages</p>	N		0-1	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of data escrow, one of the five critical registry functions;</p> <p>(2) compliance with Specification 2 of the Registry Agreement;</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section; and</p> <p>(4) the escrow arrangement is consistent with the overall business approach and size/scope of the registry.</p>	<p><b>1 – meets requirements:</b> Response includes</p> <p>(1) Adequate description of a Data Escrow process that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(2) Data escrow plans are sufficient to result in compliance with the Data Escrow Specification (Specification 2 to the Registry Agreement);</p> <p>(3) Escrow capabilities are consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(4) Demonstrates an adequate level of resources that are on hand, committed, or readily available to carry out this function.</p> <p><b>0 – fails requirements:</b> Does not meet all the requirements to score a 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	39	<p>Registry Continuity: describe how the applicant will comply with registry continuity obligations as described in Specification 6 (section 1.3) to the registry agreement. This includes conducting registry operations using diverse, redundant servers to ensure continued operation of critical functions in the case of technical failure.</p> <p>Describe resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</p> <p>The response should include, but is not limited to, the following elements of the business continuity plan:</p> <ul style="list-style-type: none"> <li>• Identification of risks and threats to compliance with registry continuity obligations;</li> <li>• Identification and definitions of vital business functions (which may include registry services beyond the five critical registry functions) versus other registry functions and supporting operations and technology;</li> <li>• Definitions of Recovery Point Objectives and Recovery Time Objective; and</li> <li>• Descriptions of testing plans to promote compliance with relevant obligations.</li> </ul> <p>To be eligible for a score of 2, answers must also include:</p> <ul style="list-style-type: none"> <li>• A highly detailed plan that provides for leading practice levels of availability; and</li> <li>• Evidence of concrete steps such as a contract with a backup provider (in addition to any currently designated service operator) or a maintained hot site.</li> </ul> <p>A complete answer is expected to be approximately 10 to 15 pages.</p>	N	<p>For reference, applicants should review the ICANN gTLD Registry Continuity Plan at <a href="http://www.icann.org/en/registries/continuity/gtld-registry-continuity-plan-25apr09-en.pdf">http://www.icann.org/en/registries/continuity/gtld-registry-continuity-plan-25apr09-en.pdf</a>.</p> <p>A Recovery Point Objective (RPO) refers to the point in time to which data should be recovered following a business disruption or disaster. The RPO allows an organization to define a window of time before a disruption or disaster during which data may be lost and is independent of the time it takes to get a system back on-line. If the RPO of a company is two hours, then when a system is brought back on-line after a disruption/disaster, all data must be restored to a point within two hours before the disaster.</p> <p>A Recovery Time Objective (RTO) is the duration of time within which a process must be restored after a business disruption or disaster to avoid what the entity may deem as unacceptable consequences. For example, pursuant to the draft Registry Agreement DNS service must not be down for longer than 4 hours. At 4 hours ICANN may invoke the use of an Emergency Back End Registry Operator to take over this function. The entity may deem this to be an unacceptable consequence therefore they may set their RTO to be something less than 4 hours and would build continuity plans accordingly.</p> <p>Vital business functions are functions that are critical to the success of the operation. For example, if a registry operator provides an additional service beyond the five critical registry functions, that it deems as central to its TLD, or supports an operation that is central to the TLD, this might be identified as a vital business function.</p>	0-2	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> <li>(1) detailed description showing plans for compliance with registry continuity obligations;</li> <li>(2) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry;</li> <li>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section; and</li> <li>(4) evidence of compliance with Specification 6 to the Registry Agreement.</li> </ol>	<p><b>2 - exceeds requirements:</b> Response meets all attributes for a score of 1 and includes:</p> <ol style="list-style-type: none"> <li>(1) Highly developed and detailed processes for maintaining registry continuity; and</li> <li>(2) Evidence of concrete steps, such as a contract with a backup service provider or a maintained hot site.</li> </ol> <p><b>1 - meets requirements:</b> Response includes:</p> <ol style="list-style-type: none"> <li>(1) Adequate description of a Registry Continuity plan that substantially demonstrates capability and knowledge required to meet this element;</li> <li>(2) Continuity plans are sufficient to result in compliance with requirements (Specification 6);</li> <li>(3) Continuity plans are consistent with the technical, operational, and financial approach as described in the application; and</li> <li>(4) Demonstrates an adequate level of resources that are on hand, committed readily available to carry out this function.</li> </ol> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score a 1.</p>
	40	<p>Registry Transition: provide a Service Migration plan (as described in the Registry Transition Processes) that could be followed in the event that it becomes necessary to permanently transition the proposed gTLD to a new operator. The plan must take into account, and be</p>	N		0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> <li>(1) complete knowledge and understanding of the Registry Transition Processes; and</li> </ol>	<p><b>1 - meets requirements:</b> Response includes</p> <ol style="list-style-type: none"> <li>(1) Adequate description of a registry transition plan that substantially demonstrates the applicant's capability and knowledge required</li> </ol>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>consistent with the vital business functions identified in the previous question.</p> <p>Elements of the plan may include, but are not limited to:</p> <ul style="list-style-type: none"> <li>• Preparatory steps needed for the transition of critical registry functions;</li> <li>• Monitoring during registry transition and efforts to minimize any interruption to critical registry functions during this time; and</li> <li>• Contingency plans in the event that any part of the registry transition is unable to move forward according to the plan.</li> </ul> <p>A complete answer is expected to be approximately 5 to 10 pages.</p>				<p>(2) a technical plan scope/scale consistent with the overall business approach and planned size of the registry.</p>	<p>to meet this element;</p> <p>(2) A description of an adequate registry transition plan with appropriate monitoring during registry transition; and</p> <p>(3) Transition plan is consistent with the technical, operational, and financial approach as described in the application.</p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score a 1.</p>
	41	<p>Failover Testing: provide</p> <ul style="list-style-type: none"> <li>• a description of the failover testing plan, including mandatory annual testing of the plan. Examples may include a description of plans to test failover of data centers or operations to alternate sites, from a hot to a cold facility, registry data escrow testing, or other mechanisms. The plan must take into account and be consistent with the vital business functions identified in Question 39; and</li> <li>• resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul> <p>The failover testing plan should include, but is not limited to, the following elements:</p> <ul style="list-style-type: none"> <li>• Types of testing (e.g., walkthroughs, takedown of sites) and the frequency of testing;</li> <li>• How results are captured, what is done with the results, and with whom results are shared;</li> <li>• How test plans are updated (e.g., what triggers an update, change management</li> </ul>	N		0-1	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of this aspect of registry technical requirements;</p> <p>(2) a technical plan scope/scale consistent with the overall business approach and planned size of the registry; and</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section.</p>	<p><b>1 - meets requirements:</b> Response includes</p> <p>(1) An adequate description of a failover testing plan that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(2) A description of an adequate failover testing plan with an appropriate level of review and analysis of failover testing results;</p> <p>(3) Failover testing plan is consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(4) Demonstrates an adequate level of resources that are on hand, committed or readily available to carry out this function.</p> <p><b>0 - fails requirements</b> Does not meet all the requirements to score a 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>processes for making updates);</p> <ul style="list-style-type: none"> <li>Length of time to restore critical registry functions;</li> <li>Length of time to restore all operations, inclusive of critical registry functions; and</li> <li>Length of time to migrate from one site to another.</li> </ul> <p>A complete answer is expected to be approximately 5 to 10 pages.</p>					
	42	<p>Monitoring and Fault Escalation Processes: provide</p> <ul style="list-style-type: none"> <li>a description of the proposed (or actual) arrangements for monitoring critical registry systems (including SRS, database systems, DNS servers, Whois service, network connectivity, routers and firewalls). This description should explain how these systems are monitored and the mechanisms that will be used for fault escalation and reporting, and should provide details of the proposed support arrangements for these registry systems.</li> <li>resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul> <p>To be eligible for a score of 2, answers must also include:</p> <ul style="list-style-type: none"> <li>Meeting the fault tolerance / monitoring guidelines described</li> <li>Evidence of commitment to provide a 24x7 fault response team.</li> </ul> <p>A complete answer is expected to be approximately 5 to 10 pages.</p>	N		0-2	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> <li>complete knowledge and understanding of this aspect of registry technical requirements;</li> <li>a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry;</li> <li>a technical plan that is adequately resourced in the planned costs detailed in the financial section; and</li> <li>consistency with the commitments made to registrants and registrars regarding system maintenance.</li> </ol>	<p><b>2 - exceeds requirements:</b> Response meets all attributes for a score of 1 and includes</p> <ol style="list-style-type: none"> <li>Evidence showing highly developed and detailed fault tolerance/monitoring and redundant systems deployed with real-time monitoring tools / dashboard (metrics) deployed and reviewed regularly;</li> <li>A high level of availability that allows for the ability to respond to faults through a 24x7 response team.</li> </ol> <p><b>1 - meets requirements:</b> Response includes</p> <ol style="list-style-type: none"> <li>Adequate description of monitoring and fault escalation processes that substantially demonstrates the applicant's capability and knowledge required to meet this element;</li> <li>Evidence showing adequate fault tolerance/monitoring systems planned with an appropriate level of monitoring and limited periodic review being performed;</li> <li>Plans are consistent with the technical, operational, and financial approach described in the application; and</li> <li>Demonstrates an adequate level of resources that are on hand, committed or readily available to carry out this function.</li> </ol> <p><b>0 - fails requirements:</b> Does not meet</p>

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							all the requirements to score 1.
	43	<p>DNSSEC: Provide</p> <ul style="list-style-type: none"> <li>The registry's DNSSEC policy statement (DPS), which should include the policies and procedures the proposed registry will follow, for example, for signing the zone file, for verifying and accepting DS records from child domains, and for generating, exchanging, and storing keying material;</li> <li>Describe how the DNSSEC implementation will comply with relevant RFCs, including but not limited to: RFCs 4033, 4034, 4035, 5910, 4509, 4641, and 5155 (the latter will only be required if Hashed Authenticated Denial of Existence will be offered); and</li> <li>resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul> <p>A complete answer is expected to be 3 to 5 pages. Note, the DPS is required to be submitted as part of the application</p>	N		0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> <li>complete knowledge and understanding of this aspect of registry technical requirements, one of the five critical registry functions;</li> <li>a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry;</li> <li>a technical plan that is adequately resourced in the planned costs detailed in the financial section; and</li> <li>an ability to comply with relevant RFCs.</li> </ol>	<p><b>1 - meets requirements:</b> Response includes</p> <ol style="list-style-type: none"> <li>An adequate description of DNSSEC that substantially demonstrates the applicant's capability and knowledge required to meet this element;</li> <li>Evidence that TLD zone files will be signed at time of launch, in compliance with required RFCs, and registry offers provisioning capabilities to accept public key material from registrants through the SRS ;</li> <li>An adequate description of key management procedures in the <i>proposed</i> TLD, including providing secure encryption key management (generation, exchange, and storage);</li> <li>Technical plan is consistent with the technical, operational, and financial approach as described in the application; and</li> <li>Demonstrates an adequate level of resources that are already on hand, committed or readily available to carry out this function.</li> </ol> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1.</p>
	44	<p><b>OPTIONAL.</b> IDNs:</p> <ul style="list-style-type: none"> <li>State whether the proposed registry will support the registration of IDN labels in the TLD, and if so, how. For example, explain which characters will be supported, and provide the associated IDN Tables with variant characters identified, along with a corresponding registration policy. This includes public interfaces to the databases such as Whois and EPP.</li> <li>Describe how the IDN implementation</li> </ul>	N	IDNs are an optional service at time of launch. Absence of IDN implementation or plans will not detract from an applicant's score. Applicants who respond to this question with plans for implementation of IDNs at time of launch will be scored according to the criteria indicated here.	0-1	<p>IDNs are an optional service. Complete answer demonstrates:</p> <ol style="list-style-type: none"> <li>complete knowledge and understanding of this aspect of registry technical requirements;</li> <li>a technical plan that is adequately resourced in the planned costs detailed in the financial section;</li> <li>consistency with the commitments made to</li> </ol>	<p><b>1 - meets requirements for this optional element:</b> Response includes</p> <ol style="list-style-type: none"> <li>Adequate description of IDN implementation that substantially demonstrates the applicant's capability and knowledge required to meet this element;</li> <li>An adequate description of the IDN procedures, including complete IDN tables, compliance with IDNA/IDN guidelines and RFCs, and periodic monitoring of IDN operations;</li> <li>Evidence of ability to resolve</li> </ol>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>will comply with RFCs 5809-5893 as well as the ICANN IDN Guidelines at <a href="http://www.icann.org/en/topics/idn/implementation-guidelines.htm">http://www.icann.org/en/topics/idn/implementation-guidelines.htm</a>.</p> <ul style="list-style-type: none"> <li>Describe resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul> <p>A complete answer is expected to be approximately 5 to 10 pages plus attachments.</p>				<p>registrants and the technical, operational, and financial approach described in the application;</p> <p>(4) issues regarding use of scripts are settled and IDN tables are complete and publicly available; and</p> <p>(5) ability to comply with relevant RFCs.</p>	<p>rendering and known IDN issues or spoofing attacks;</p> <p>(4) IDN plans are consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(5) Demonstrates an adequate level of resources that are on hand, committed readily available to carry out this function.</p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score a 1.</p>
Demonstration of Financial Capability	45	<p>Financial Statements: provide</p> <ul style="list-style-type: none"> <li>audited or independently certified financial statements for the most recently completed fiscal year for the applicant, and</li> <li>audited or unaudited financial statements for the most recently ended interim financial period for the applicant for which this information may be released.</li> </ul> <p>For newly-formed applicants, or where financial statements are not audited, provide:</p> <ul style="list-style-type: none"> <li>the latest available unaudited financial statements; and</li> <li>an explanation as to why audited or independently certified financial statements are not available.</li> </ul> <p>At a minimum, the financial statements should be provided for the legal entity listed as the applicant.</p> <p>Financial statements are used in the analysis of projections and costs.</p> <p>A complete answer should include:</p> <ul style="list-style-type: none"> <li>balance sheet;</li> <li>income statement;</li> <li>statement of shareholders equity/partner capital;</li> <li>cash flow statement, and</li> <li>letter of auditor or independent certification, if applicable.</li> </ul>	N	The questions in this section (45-50) are intended to give applicants an opportunity to demonstrate their financial capabilities to run a registry.	0-1	<p>Audited or independently certified financial statements are prepared in accordance with International Financial Reporting Standards (IFRS) adopted by the International Accounting Standards Board (IASB) or nationally recognized accounting standards (e.g., GAAP). This will include a balance sheet and income statement reflecting the applicant's financial position and results of operations, a statement of shareholders equity/partner capital, and a cash flow statement. In the event the applicant is an entity newly formed for the purpose of applying for a gTLD and with little to no operating history (less than one year), the applicant must submit, at a minimum, pro forma financial statements including all components listed in the question. Where audited or independently certified financial statements are not available, applicant has provided an adequate explanation as to the accounting practices in its jurisdiction and has provided, at a minimum, unaudited financial statements.</p>	<p><b>1 - meets requirements:</b> Complete audited or independently certified financial statements are provided, at the highest level available in the applicant's jurisdiction. Where such audited or independently certified financial statements are not available, such as for newly-formed entities, the applicant has provided an explanation and has provided, at a minimum, unaudited financial statements.</p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1. For example, entity with an operating history fails to provide audited or independently certified statements.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	46	<p>Projections Template: provide financial projections for costs and funding using Template 1, Most Likely Scenario (attached).</p> <p>Note, if certain services are outsourced, reflect this in the relevant cost section of the template.</p> <p>The template is intended to provide commonality among TLD applications and thereby facilitate the evaluation process.</p> <p>A complete answer is expected to be 5-10 pages in addition to the template.</p>	N		0-1	<p>Applicant has provided a thorough model that demonstrates a sustainable business (even if break-even is not achieved through the first three years of operation).</p> <p>Applicant's description of projections development is sufficient to show due diligence.</p>	<p><b>1 - meets requirements:</b></p> <ol style="list-style-type: none"> <li>(1) Financial projections adequately describe the cost, funding and risks for the application</li> <li>(2) Demonstrates resources and plan for sustainable operations; and</li> <li>(3) Financial assumptions about the registry operations, funding and market are identified, explained, and supported.</li> </ol> <p><b>0 - fails requirements:</b> Does not meet all of the requirements to score a 1.</p>
	47	<p>Costs and capital expenditures: in conjunction with the financial projections template, describe and explain:</p> <ul style="list-style-type: none"> <li>• the expected operating costs and capital expenditures of setting up and operating the proposed registry;</li> <li>• any functions to be outsourced, as indicated in the cost section of the template, and the reasons for outsourcing;</li> <li>• any significant variances between years in any category of expected costs; and</li> <li>• a description of the basis / key assumptions including rationale for the costs provided in the projections template. This may include an executive summary or summary outcome of studies, reference data, or other steps taken to develop the responses and validate any assumptions made.</li> </ul> <p>As described in the Applicant Guidebook, the information provided will be considered in light of the entire application and the evaluation criteria. Therefore, this answer should agree with the information provided in Template 1 to: 1) maintain registry operations, 2) provide registry services described above, and 3) satisfy the technical requirements described in the Demonstration of Technical &amp; Operational Capability section. Costs should include both fixed and variable costs.</p>	N	This question is based on the template submitted in question 46.	0-2	<p>Costs identified are consistent with the proposed registry services, adequately fund technical requirements, and are consistent with proposed mission/purpose of the registry. Costs projected are reasonable for a registry of size and scope described in the application. Costs identified include the funding costs (interest expenses and fees) related to the continued operations instrument described in Question 50 below.</p> <p>Key assumptions and their rationale are clearly described and may include, but are not limited to:</p> <ul style="list-style-type: none"> <li>• Key components of capital expenditures;</li> <li>• Key components of operating costs, unit operating costs, headcount, number of technical/operating/equipment units, marketing, and other costs; and</li> <li>• Costs of outsourcing,</li> </ul>	<p><b>2 - exceeds requirements:</b> Response meets all of the attributes for a score of 1 and:</p> <ol style="list-style-type: none"> <li>(1) Estimated costs and assumptions are conservative and consistent with an operation of the registry volume/scope/size as described by the applicant;</li> <li>(2) Estimates are derived from actual examples of previous or existing registry operations or equivalent; and</li> <li>(3) Conservative estimates are based on those experiences and describe a range of anticipated costs and use the high end of those estimates.</li> </ol> <p><b>1 - meets requirements:</b></p> <ol style="list-style-type: none"> <li>(1) Cost elements are reasonable and complete (i.e., cover all of the aspects of registry operations: registry services, technical requirements and other aspects as described by the applicant);</li> <li>(2) Estimated costs and assumptions are consistent and defensible with an operation of the registry volume/scope/size as described by the applicant; and</li> <li>(3) Projections are reasonably aligned with the historical financial statements provided in Question 45.</li> </ol> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score a 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>To be eligible for a score of two points, answers must demonstrate a conservative estimate of costs based on actual examples of previous or existing registry operations with similar approach and projections for growth and costs or equivalent. Attach reference material for such examples.</p> <p>A complete answer is expected to be approximately 5-10 pages.</p>				if any.	
		<p>(b) Describe anticipated ranges in projected costs. Describe factors that affect those ranges.</p> <p>A complete answer is expected to be approximately 5-10 pages.</p>	N				
	48	<p>(a) Funding and Revenue: Funding can be derived from several sources (e.g., existing capital or proceeds/revenue from operation of the proposed registry).</p> <p>Describe:</p> <p>I) How existing funds will provide resources for both: a) start-up of operations, and b) ongoing operations;</p> <p>II) the revenue model including projections for transaction volumes and price (if the applicant does not intend to rely on registration revenue in order to cover the costs of the registry's operation, it must clarify how the funding for the operation will be developed and maintained in a stable and sustainable manner);</p> <p>III) outside sources of funding (the applicant must, where applicable, provide evidence of the commitment by the party committing the funds). Secured vs unsecured funding should be clearly identified, including associated sources of funding (i.e., different types of funding, level and type of security/collateral, and key items) for each type of funding;</p> <p>IV) Any significant variances between years in any category of funding and revenue; and</p> <p>V) A description of the basis / key assumptions</p>	N		0-2	<p>Funding resources are clearly identified and adequately provide for registry cost projections. Sources of capital funding are clearly identified, held apart from other potential uses of those funds and available. The plan for transition of funding sources from available capital to revenue from operations (if applicable) is described. Outside sources of funding are documented and verified. Examples of evidence for funding sources include, but are not limited to:</p> <ul style="list-style-type: none"> <li>• Executed funding agreements;</li> <li>• A letter of credit;</li> <li>• A commitment letter; or</li> <li>• A bank statement.</li> </ul> <p>Funding commitments may</p>	<p><b>2 - exceeds requirements:</b> Response meets all the attributes for a score of 1 and</p> <ol style="list-style-type: none"> <li>(1) Existing funds (specifically all funds required for start-up) are quantified, on hand, segregated in an account available only to the applicant for purposes of the application only, ;</li> <li>(2) If on-going operations are to be at least partially resourced from existing funds (rather than revenue from on-going operations) that funding is segregated and earmarked for this purpose only in an amount adequate for three years operation;</li> <li>(3) If ongoing operations are to be at least partially resourced from revenues, assumptions made are conservative and take into consideration studies, reference data, or other steps taken to develop the response and validate any assumptions made; and</li> <li>(4) Cash flow models are prepared which link funding and revenue assumptions to projected actual</li> </ol>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>including rationale for the funding and revenue provided in the projections template. This may include an executive summary or summary outcome of studies, reference data, or other steps taken to develop the responses and validate any assumptions made; and VI) Assurances that funding and revenue projections cited in this application are consistent with other public and private claims made to promote the business and generate support. To be eligible for a score of 2 points, answers must demonstrate:</p> <p>I) A conservative estimate of funding and revenue; and</p> <p>II) Ongoing operations that are not dependent on projected revenue.</p> <p>A complete answer is expected to be approximately 5-10 pages.</p>				<p>be conditional on the approval of the application. Sources of capital funding required to sustain registry operations on an on-going basis are identified. The projected revenues are consistent with the size and projected penetration of the target markets.</p> <p>Key assumptions and their rationale are clearly described and address, at a minimum:</p> <ul style="list-style-type: none"> <li>• Key components of the funding plan and their key terms; and</li> <li>• Price and number of registrations.</li> </ul>	<p>business activity.</p> <p><b>1 - meets requirements:</b></p> <p>(1) Assurances provided that materials provided to investors and/or lenders are consistent with the projections and assumptions included in the projections templates;</p> <p>(2) Existing funds (specifically all funds required for start-up) are quantified, committed, identified as available to the applicant;</p> <p>(3) If on-going operations are to be at least partially resourced from existing funds (rather than revenue from on-going operations) that funding is quantified and its sources identified in an amount adequate for three years operation;</p> <p>(4) If ongoing operations are to be at least partially resourced from revenues, assumptions made are reasonable and are directly related to projected business volumes, market size and penetration; and</p> <p>(5) Projections are reasonably aligned with the historical financial statements provided in Question 45.</p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score a 1.</p>
		<p>(b) Describe anticipated ranges in projected funding and revenue. Describe factors that affect those ranges.</p> <p>A complete answer is expected to be approximately 5-10 pages.</p>	N				
	49	<p>(a) Contingency Planning: describe your contingency planning:</p> <ul style="list-style-type: none"> <li>• Identify any projected barriers/risks to implementation of the business approach described in the application and how they affect cost, funding, revenue, or timeline in your planning;</li> <li>• Identify the impact of any particular regulation, law or policy that might impact the Registry Services offering; and</li> <li>• Describe the measures to mitigate the</li> </ul>	N		0-2	<p>Contingencies and risks are identified, quantified, and included in the cost, revenue, and funding analyses. Action plans are identified in the event contingencies occur. The model is resilient in the event those contingencies occur. Responses address the probability and resource impact of the contingencies identified.</p>	<p><b>2 - exceeds requirements:</b> Response meets all attributes for a score of 1 and:</p> <p>(1) Action plans and operations are adequately resourced in the existing funding and revenue plan even if contingencies occur.</p> <p><b>1 - meets requirements:</b></p> <p>(1) Model adequately identifies the key risks (including operational, business, legal, jurisdictional, financial, and other relevant risks);</p> <p>(2) Response gives consideration to probability and resource impact of</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>key risks as described in this question.</p> <p>A complete answer should include, for each contingency, a clear description of the impact to projected revenue, funding, and costs for the 3-year period presented in Template 1 (Most Likely Scenario).</p> <p>To be eligible for a score of 2 points, answers must demonstrate that action plans and operations are adequately resourced in the existing funding and revenue plan even if contingencies occur.</p> <p>A complete answer is expected to be approximately 5-10 pages.</p>					<p>contingencies identified; and</p> <p>(3) If resources are not available to fund contingencies in the existing plan, funding sources and a plan for obtaining them are identified.</p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score a 1.</p>
		<p>(b) Describe your contingency planning where funding sources are so significantly reduced that material deviations from the implementation model are required. In particular, describe:</p> <ul style="list-style-type: none"> <li>• how on-going technical requirements will be met; and</li> <li>• what alternative funding can be reasonably raised at a later time.</li> </ul> <p>Provide an explanation if you do not believe there is any chance of reduced funding.</p> <p>Complete a financial projections template (Template 2, Worst Case Scenario)</p> <p>A complete answer is expected to be approximately 5-10 pages, in addition to the template.</p>	N				
		<p>(c) Describe your contingency planning where activity volumes so significantly exceed the high projections that material deviation from the implementation model are required. In particular, how will on-going technical requirements be met?</p> <p>A complete answer is expected to be approximately 5-10 pages.</p>	N				
	50	<p>(a) Provide a cost estimate for funding critical registry functions on an annual basis, and a rationale for these cost estimates commensurate with the technical, operational, and financial approach</p>	N	<p>Registrant protection is critical and thus new gTLD applicants are requested to provide evidence indicating that the critical functions will continue to be performed even if the registry fails. Registrant needs are best</p>	0-3	<p>Figures provided are based on an accurate estimate of costs. Documented evidence or detailed plan for ability to fund on-going critical registry</p>	<p><b>3 - exceeds requirements:</b> Response meets all the attributes for a score of 1 and:</p> <p>(1) Financial instrument is secured and in place to provide for on-going</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>described in the application.</p> <p>The critical functions of a registry which must be supported even if an applicant's business and/or funding fails are:</p> <p>(1) DNS resolution for registered domain names</p> <p>Applicants should consider ranges of volume of daily DNS queries (e.g., 0-100M, 100M-1B, 1B+), the incremental costs associated with increasing levels of such queries, and the ability to meet SLA performance metrics.</p> <p>(2) Operation of the Shared Registration System</p> <p>Applicants should consider ranges of volume of daily EPP transactions (e.g., 0-200K, 200K-2M, 2M+), the incremental costs associated with increasing levels of such queries, and the ability to meet SLA performance metrics.</p> <p>(3) Provision of Whois service</p> <p>Applicants should consider ranges of volume of daily Whois queries (e.g., 0-100K, 100k-1M, 1M+), the incremental costs associated with increasing levels of such queries, and the ability to meet SLA performance metrics for both web-based and port-43 services.</p> <p>(4) Registry data escrow deposits</p> <p>Applicants should consider administration, retention, and transfer fees as well as daily deposit (e.g., full or incremental) handling. Costs may vary depending on the size of the files in escrow (i.e., the size of the registry database).</p>		<p>protected by a clear demonstration that the basic registry functions are sustained for an extended period even in the face of registry failure. Therefore, this section is weighted heavily as a clear, objective measure to protect and serve registrants.</p> <p>The applicant has two tasks associated with adequately making this demonstration of continuity for critical registry functions. First, costs for maintaining critical registrant protection functions are to be estimated (Part a). In evaluating the application, the evaluators will adjudge whether the estimate is reasonable given the systems architecture and overall business approach described elsewhere in the application.</p> <p>The Continuing Operations Instrument (COI) is invoked by ICANN if necessary to pay for an Emergency Back End Registry Operator (EBERO) to maintain the five critical registry functions for a period of three to five years. Thus, the cost estimates are tied to the cost for a third party to provide the functions, not to the applicant's actual in-house or subcontracting costs for provision of these functions.</p> <p>Note that ICANN is building a model for these costs in conjunction with potential EBERO service providers. Thus, guidelines for determining the appropriate amount for the COI will be available to the applicant. However, the applicant will still be required to provide its own estimates and explanation in response to this question.</p>		<p>functions for registrants for a period of three years in the event of registry failure, default or until a successor operator can be designated. Evidence of financial wherewithal to fund this requirement prior to delegation. This requirement must be met prior to or concurrent with the execution of the Registry Agreement.</p>	<p>operations for at least three years in the event of failure.</p> <p><b>1 - meets requirements:</b></p> <p>(1) Costs are commensurate with technical, operational, and financial approach as described in the application; and</p> <p>(2) Funding is identified and instrument is described to provide for on-going operations of at least three years in the event of failure.</p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score a 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>(5) Maintenance of a properly signed zone in accordance with DNSSEC requirements.</p> <p>Applicants should consider ranges of volume of daily DNS queries (e.g., 0-100M, 100M-1B, 1B+), the incremental costs associated with increasing levels of such queries, and the ability to meet SLA performance metrics.</p> <p>List the estimated annual cost for each of these functions (specify currency used).</p> <p>A complete answer is expected to be approximately 5-10 pages.</p>					
		<p>(b) Applicants must provide evidence as to how the funds required for performing these critical registry functions will be available and guaranteed to fund registry operations (for the protection of registrants in the new gTLD) for a minimum of three years following the termination of the Registry Agreement. ICANN has identified two methods to fulfill this requirement:</p> <p><u>(i) Irrevocable standby letter of credit (LOC)</u> issued by a reputable financial institution.</p> <ul style="list-style-type: none"> <li>The amount of the LOC must be equal to or greater than the amount required to fund the registry operations specified above for at least three years. In the event of a draw upon the letter of credit, the actual payout would be tied to the cost of running those functions.</li> <li>The LOC must name ICANN or its designee as the beneficiary. Any funds paid out would be provided to the designee who is operating the required registry functions.</li> <li>The LOC must have a term of at least five years from the delegation of the TLD. The LOC may be structured with an annual expiration date if it contains an evergreen provision providing for annual extensions, without amendment, for an indefinite number of periods until the issuing bank informs the beneficiary of its final expiration or until the beneficiary releases the LOC as evidenced in writing. If the expiration date occurs prior to the fifth anniversary of the delegation of the TLD, applicant will be required</li> </ul>	N	<p>Second (Part b), methods of securing the funds required to perform those functions for at least three years are to be described by the applicant in accordance with the criteria below. Two types of instruments will fulfill this requirement. The applicant must identify which of the two methods is being described. The instrument is required to be in place at the time of the execution of the Registry Agreement.</p>			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>to obtain a replacement instrument.</p> <ul style="list-style-type: none"> <li>• The LOC must be issued by a reputable financial institution insured at the highest level in its jurisdiction. This may include a bank or insurance company with a strong international reputation that has a strong credit rating issued by a third party rating agency such as Standard &amp; Poor's (AA or above), Moody's (Aa or above), or A.M. Best (A-X or above). Documentation should indicate by whom the issuing institution is insured.</li> <li>• The LOC will provide that ICANN or its designee shall be unconditionally entitled to a release of funds (full or partial) thereunder upon delivery of written notice by ICANN or its designee.</li> <li>• Applicant should attach an original copy of the executed letter of credit or a draft of the letter of credit containing the full terms and conditions. If not yet executed, the Applicant will be required to provide ICANN with an original copy of the executed LOC prior to or concurrent with the execution of the Registry Agreement.</li> <li>• The LOC must contain at least the following required elements: <ul style="list-style-type: none"> <li>○ Issuing bank and date of issue.</li> <li>○ Beneficiary: ICANN / 4676 Admiralty Way, Suite 330 / Marina del Rey, CA 90292 / US, or its designee.</li> <li>○ Applicant's complete name and address.</li> <li>○ LOC identifying number.</li> <li>○ Exact amount in USD.</li> <li>○ Expiry date.</li> <li>○ Address, procedure, and required forms whereby presentation for payment is to be made.</li> <li>○ Conditions: <ul style="list-style-type: none"> <li>▪ Partial drawings from the letter of credit may be made provided that such payment shall reduce the amount under the standby letter of credit.</li> <li>▪ All payments must be marked with the issuing bank name and the bank's standby letter of credit number.</li> <li>▪ LOC may not be modified, amended, or amplified by reference to any other document, agreement, or instrument.</li> <li>▪ The LOC is subject to the International Standby Practices (ISP 98) International Chamber of Commerce (Publication No. 590), or</li> </ul> </li> </ul> </li> </ul>					

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>to an alternative standard that has been demonstrated to be reasonably equivalent.</p> <p>(ii) A <u>deposit into an irrevocable cash escrow account</u> held by a reputable financial institution.</p> <ul style="list-style-type: none"> <li>• The amount of the deposit must be equal to or greater than the amount required to fund registry operations for at least three years.</li> <li>• Cash is to be held by a third party financial institution which will not allow the funds to be commingled with the Applicant's operating funds or other funds and may only be accessed by ICANN or its designee if certain conditions are met.</li> <li>• The account must be held by a reputable financial institution insured at the highest level in its jurisdiction. This may include a bank or insurance company with a strong international reputation that has a strong credit rating issued by a third party rating agency such as Standard &amp; Poor's (AA or above), Moody's (Aa or above), or A.M. Best (A-X or above). Documentation should indicate by whom the issuing institution is insured.</li> <li>• The escrow agreement relating to the escrow account will provide that ICANN or its designee shall be unconditionally entitled to a release of funds (full or partial) thereunder upon delivery of written notice by ICANN or its designee.</li> <li>• The escrow agreement must have a term of five years from the delegation of the TLD.</li> <li>• The funds in the deposit escrow account are not considered to be an asset of ICANN.</li> <li>• Any interest earnings less bank fees are to accrue to the deposit, and will be paid back to the applicant upon liquidation of the account to the extent not used to pay the costs and expenses of maintaining the escrow.</li> <li>• The deposit plus accrued interest, less any bank fees in respect of the escrow, is to be returned to the applicant if the funds are not used to fund registry functions due to a triggering event or after five years, whichever is greater.</li> <li>• The Applicant will be required to provide ICANN an explanation as to the amount of the deposit, the institution that will hold the deposit, and the escrow agreement for the account at the</li> </ul>					

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		time of submitting an application. <ul style="list-style-type: none"> <li>Applicant should attach evidence of deposited funds in the escrow account, or evidence of provisional arrangement for deposit of funds. Evidence of deposited funds and terms of escrow agreement must be provided to ICANN prior to or concurrent with the execution of the Registry Agreement.</li> </ul>					

## Instructions: TLD Applicant – Financial Projections

The application process requires the applicant to submit two cash basis Financial Projections.

The first projection (Template 1) should show the Financial Projections associated with the Most Likely scenario expected. This projection should include the forecasted registration volume, registration fee, and all costs and capital expenditures expected during the start-up period and during the first three years of operations. Template 1 relates to Question 46 (Projections Template) in the application.

We also ask that applicants show as a separate projection (Template 2) the Financial Projections associated with a realistic Worst Case scenario. Template 2 relates to Question 49 (Contingency Planning) in the application.

For each Projection prepared, please include Comments and Notes on the bottom of the projection (in the area provided) to provide those reviewing these projections with information regarding:

1. Assumptions used, significant variances in Operating Cash Flows and Capital Expenditures from year-to-year;
2. How you plan to fund operations;
3. Contingency planning

As you complete Template 1 and Template 2, please reference data points and/or formulas used in your calculations (where appropriate).

### Section I – Projected Cash inflows and outflows

#### Projected Cash Inflows

**Lines A and B.** Provide the number of forecasted registrations and the registration fee for years 1, 2, and 3. Leave the *Start-up* column blank. The start-up period is for cash costs and capital expenditures only; there should be no cash projections input to this column.

**Line C.** Multiply lines A and B to arrive at the *Registration Cash Inflow* for line C.

**Line D.** Provide projected cash inflows from any other revenue source for years 1, 2, and 3. For any figures provided on line D, please disclose the source in the *Comments/Notes* box of Section I. Note, do not include funding in Line D as that is covered in Section VI.

**Line E.** Add lines C and D to arrive at the total cash inflow.

#### Projected Operating Cash Outflows

**Start up costs** - For all line items (F thru L) Please describe the total period of time this start-up cost is expected to cover in the *Comments/Notes* box.

**Line F.** Provide the projected labor costs for marketing, customer support, and technical support for start-up, year 1, year 2, and year 3. Note, other labor costs should be put in line *L (Other Costs)* and specify the type of labor and associated projected costs in the *Comments/Notes* box of this section.

**Line G.** *Marketing Costs* represent the amount spent on advertising, promotions, and other marketing activities. This amount should not include labor costs included in Marketing Labor (line *F*).

**Lines H through K.** Provide projected costs for facilities, G&A, interests and taxes, and Outsourcing for start-up as well as for years 1, 2, and 3. Be sure to list the type of activities that are being outsourced. You may combine certain activities from the same provider as long as an appropriate description of the services being combined is listed in the *Comments/Notes* box.

**Line L.** Provide any other projected operating costs for start-up, year 1, year 2, year 3. Be sure to specify the type of cost in the *Comments/Notes* box.

**Line M.** Add lines *F* through *L* to arrive at the total costs for line *M*.

**Line N.** Subtract line *E* from line *M* to arrive at the projected net operation number for line *N*.

## **Section IIa – Breakout of Fixed and Variable Operating Cash Outflows**

**Line A.** Provide the projected variable operating cash outflows including labor and other costs that are not fixed in nature. Variable operating cash outflows are expenditures that fluctuate in relationship with increases or decreases in production or level of operations.

**Line B.** Provide the projected fixed operating cash outflows. Fixed operating cash outflows are expenditures that do not generally fluctuate in relationship with increases or decreases in production or level of operations. Such costs are generally necessary to be incurred in order to operate the base line operations of the organization or are expected to be incurred based on contractual commitments.

**Line C –** Add lines *A* and *B* to arrive at total Fixed and Variable Operating Cash Outflows for line *C*. This must equal Total Operating Cash Outflows from Section I, Line *M*.

## **Section IIb – Breakout of Critical Registry Function Operating Cash Outflows**

**Lines A – E.** Provide the projected cash outflows for the five critical registry functions. If these functions are outsourced, the component of the outsourcing fee representing these functions must be separately identified and provided. The projected cash outflow for these functions will form the basis of the 3-year reserve required in Question 50 of the application.

**Line F.** If there are other critical registry functions based on the applicant's registry business model then the projected cash outflow for this function must be provided with a description added to the *Comment/Notes* box.

**Line G.** Add lines *A* through *F* to arrive at the Total Critical Registry Function Cash Outflows.

**Line H –** Equals the cash outflows for the critical registry functions projected over 3 years (Columns H, I, and J)

### Section III – Projected Capital Expenditures

**Lines A through C.** Provide projected hardware, software, and furniture & equipment capital expenditures for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

**Line D.** Provide any projected capital expenditures as a result of outsourcing. This should be included for start-up and years 1, 2, and 3. Specify the type of expenditure and describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box of Section III.

**Line E** – Please describe “other” capital expenditures in the *Comments/Notes* box.

**Line F.** Add lines A through E to arrive at the Total Capital Expenditures.

### Section IV – Projected Assets & Liabilities

**Lines A through C.** Provide projected cash, account receivables, and other current assets for start-up as well as for years 1, 2, and 3. For *Other Current Assets*, specify the type of asset and describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

**Line D.** Add lines A, B, C to arrive at the Total Current Assets.

**Lines E through G.** Provide projected accounts payable, short-term debt, and other current liabilities for start-up as well as for years 1, 2, and 3. For *Other Current Liabilities*, specify the type of liability and describe the total period of time the start-up up cost is expected to cover in the *Comments/Notes* box.

**Line H.** Ad lines E through G to arrive at the total current liabilities.

**Lines I through K.** Provide the projected fixed assets (PP&E), the 3-year reserve, and long-term assets for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

**Line L.** Ad lines I through K to arrive at the total long-term assets.

**Line M.** Provide the projected long-term debt for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box

### Section V – Projected Cash Flow

Cash flow is driven by *Projected Net Operations* (Section I), *Projected Capital Expenditures* (Section III), and *Projected Assets & Liabilities* (Section IV).

**Line A.** Provide the projected net operating cash flows for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

**Line B.** Provide the projected capital expenditures for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box of Section V.

**Lines C through F.** Provide the projected change in non-cash current assets, total current liabilities, debt adjustments, and other adjustments for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

**Line G.** Add lines A through F to arrive at the projected net cash flow for line H.

## **Section VI – Sources of Funds**

**Lines A & B.** Provide projected funds from debt and equity at start-up. Describe the sources of debt and equity funding as well as the total period of time the start-up is expected to cover in the *Comments/Notes* box. Please also provide evidence the funding (e.g., letter of commitment).

**Line C.** Add lines A and B to arrive at the total sources of funds for line C.

## **General Comments – Regarding Assumptions Used, Significant Variances Between Years, etc.**

Provide explanations for any significant variances between years (or expected in years beyond the timeframe of the template) in any category of costing or funding.

## **General Comments – Regarding how the Applicant Plans to Fund Operations**

Provide general comments explaining how you will fund operations. Funding should be explained in detail in response to question 48.

## **General Comments – Regarding Contingencies**

Provide general comments to describe your contingency planning. Contingency planning should be explained in detail in response to question 49.

TLD Applicant -- Financial Projections : <b>Sample</b>					Comments / Notes	
In local currency (unless noted otherwise)						
Sec.	Reference / Formula	Live / Operational				
		Start-up Costs	Year 1	Year 2	Year 3	
<b>I) Projected Cash Inflows and Outflows</b>						
A) Forecasted registration volume		-	62,000	80,600	104,780	Registration was forecasted based on recent market surveys which we have attached and discussed below.
B) Registration fee		\$ -	\$ 5.00	\$ 5.50	\$ 6.05	We do not anticipate significant increases in Registration Fees subsequent to year 3.
C) Registration cash inflows	A * B	-	310,000	443,300	633,919	
D) Other cash inflows		-	35,000	48,000	62,000	Other cash inflows represent advertising monies expected from display ads on our website.
E) Total Cash Inflows		-	345,000	491,300	695,919	
<b>Projected Operating Cash Outflows</b>						
F) Labor:						
i) Marketing Labor		25,000	66,000	72,000	81,000	Costs are further detailed and explained in response to question 47.
ii) Customer Support Labor		5,000	68,000	71,000	74,000	
iii) Technical Labor		32,000	45,000	47,000	49,000	
G) Marketing		40,000	44,000	26,400	31,680	
H) Facilities		7,000	10,000	12,000	14,400	
I) General & Administrative		14,000	112,000	122,500	136,000	
J) Interest and Taxes		27,500	29,000	29,800	30,760	
<b>K) Outsourcing Operating Costs, if any (list the type of activities being outsourced):</b>						
i) Hot site maintenance		5,000	7,500	7,500	7,500	Provide a list and associated cost for each outsourced function.
ii) Critical Registry Functions		32,000	37,500	41,000	43,000	Outsourcing hot site to ABC Company, cost based on number of servers hosted and customer support. Outsourced critical registry and other functions to ABC registry. Costs are based on expected domains and queries.
iii) (list type of activities being outsourced)		-	-	-	-	Provide a description of the outsourced activities and how costs were determined.
iv) (list type of activities being outsourced)		-	-	-	-	Provide a description of the outsourced activities and how costs were determined.
v) (list type of activities being outsourced)		-	-	-	-	Provide a description of the outsourced activities and how costs were determined.
vi) (list type of activities being outsourced)		-	-	-	-	Provide a description of the outsourced activities and how costs were determined.
L) Other Operating Costs		12,200	18,000	21,600	25,920	
M) Total Operating Cash Outflows		199,700	437,000	450,800	493,260	
N) Projected Net Operating Cash flow	E - M	(199,700)	(92,000)	40,500	202,659	
<b>IIa) Break out of Fixed and Variable Operating Cash Outflows</b>						
A) Total Variable Operating Costs		72,067	163,417	154,464	200,683	Variable Costs: Start Up equals all labor plus 75% of marketing. Years 1 through 3 equal 75% of all labor plus 50% of Marketing, and 30% of G&A and Other costs
B) Total Fixed Operating Costs		127,633	273,583	296,336	292,577	Fixed Costs: equals Total Costs less Variable Costs
C) Total Operating Cash Outflows	= Sec. I) M CHECK	199,700	437,000	450,800	493,260	Check that II) C equals I) N.
<b>IIb) Break out of Critical Registry Function Operating Cash Outflows</b>						
A) Operation of SRS		5,000	5,500	6,050	6,050	Note: ICANN is working on cost model that will be provided at a later date.
B) Provision of Whois		6,000	6,600	7,260	7,260	Commensurate with Question 24
C) DNS Resolution for Registered Domain Names		7,000	7,700	8,470	8,470	Commensurate with Question 26
D) Registry Data Escrow		8,000	8,800	9,680	9,680	Commensurate with Question 35
E) Maintenance of Zone in accordance with DNSSEC		9,000	9,900	10,890	10,890	Commensurate with Question 38
G) Total Critical Function Cash Outflows		-	35,000	38,500	42,350	Commensurate with Question 43
H) 3-year Total		115,850				
<b>III) Projected Capital Expenditures</b>						
A) Hardware		98,000	21,000	16,000	58,000	-Hardware & Software have a useful life of 3 years
B) Software		32,000	18,000	24,000	11,000	
C) Furniture & Other Equipment		43,000	22,000	14,000	16,000	-Furniture & other equipment have a useful life of 5 years
<b>D) Outsourcing Capital Expenditures, if any (list the type of capital expenditures):</b>						
i)		-	-	-	-	List and describe each identifiable type of outsourcing.
ii)		-	-	-	-	List and describe each identifiable type of outsourcing.
iii)		-	-	-	-	List and describe each identifiable type of outsourcing.
iv)		-	-	-	-	List and describe each identifiable type of outsourcing.
v)		-	-	-	-	List and describe each identifiable type of outsourcing.
vi)		-	-	-	-	List and describe each identifiable type of outsourcing.
EB) Other Capital Expenditures						
F) Total Capital Expenditures		173,000	61,000	54,000	85,000	
<b>IV) Projected Assets &amp; Liabilities</b>						
A) Cash		705,300	556,300	578,600	784,600	
B) Accounts receivable		70,000	106,000	106,000	160,000	
C) Other current assets		-	40,000	60,000	80,000	
D) Total Current Assets		705,300	666,300	744,600	1,024,600	
E) Accounts payable		41,000	110,000	113,000	125,300	
F) Short-term Debt		-	-	-	-	
G) Other Current Liabilities		-	-	-	-	
H) Total Current Liabilities		41,000	110,000	113,000	125,300	
I) Total Property, Plant & Equipment (PP&E)	= Sec III) F: cumulative Prior Years + Cur Yr	173,000	234,000	288,000	373,000	
J) 3-year Reserve	= IIb) H)	115,850	115,850	115,850	115,850	
K) Other Long-term Assets		288,850	349,850	403,850	488,850	
L) Total Long-term Assets		288,850	349,850	403,850	488,850	
M) Total Long-term Debt		1,000,000	1,000,000	1,000,000	1,000,000	Principal payments on the line of credit with XYZ Bank will not be incurred until Year 5. Interest will be paid as incurred and is reflected in Sec I) J.
<b>V) Projected Cash flow (excl. 3-year Reserve)</b>						
A) Net operating cash flows	= Sec. I) N	(199,700)	(92,000)	40,500	202,659	
B) Capital expenditures	= Sec. III) FE	(173,000)	(61,000)	(54,000)	(85,000)	
C) Change in Non Cash Current Assets	= Sec. IV) (B+C): Prior Yr - Cur Yr	n/a	(110,000)	(56,000)	(74,000)	
D) Change in Total Current Liabilities	= Sec. IV) H: Cur Yr - Prior Yr	41,000	69,000	3,000	12,300	The \$41k in Start Up Costs represents an offset of the Accounts Payable reflected in the Projected balance sheet. Subsequent years are based on changes in Current Liabilities where Prior Year is subtracted from the Current year
E) Debt Adjustments	= Sec IV) F and M: Cur Yr - Prior Yr	n/a	-	-	-	
F) Other Adjustments		-	-	-	-	
G) Projected Net Cash flow		(331,700)	(194,000)	(66,500)	55,959	
<b>VI) Sources of funds</b>						
A) Debt:						
i) On-hand at time of application		1,000,000	-	-	-	See below for comments on funding. Revenues are further detailed and explained in response to question 48.
ii) Contingent and/or committed but not yet on-hand		-	-	-	-	
B) Equity:						
i) On-hand at time of application		-	-	-	-	
ii) Contingent and/or committed but not yet on-hand		-	-	-	-	
C) Total Sources of funds		1,000,000	-	-	-	
<b>General Comments (Notes Regarding Assumptions Used, Significant Variances Between Years, etc.):</b>						
We expect the number of registrations to grow at approximately 30% per year with an increase in the registration fee of \$1 per year for the first three years. These volume assumptions are based on the attached (i) market data and (ii) published benchmark registry growth. Fee assumptions are aligned with the growth plan and anticipated demand based on the registration curve. We anticipate our costs will increase at a controlled pace over the first three years except for marketing costs which will be higher in the start-up and first year as we establish our brand name and work to increase registrations. Operating costs are supported by the attached (i) benchmark report for a basket of similar registries and (ii) a build-up of costs based on our current operations. Our capital expenditures will be greatest in the start-up phase and then our need to invest in computer hardware and software will level off after the start-up period. Capital expenses are based on contract drafts and discussions held with vendors. We have included and referenced the hardware costs to support the estimates. Our investment in Furniture and Equipment will be greatest in the start-up period as we build our infrastructure and then decrease in the following periods. Start-up: Our start-up phase is anticipated to comprise [X] months in line with benchmark growth curves indicated by prior start-ups and published market data. Our assumptions were derived from the attached						
<b>Comments regarding how the Applicant plans to fund operations:</b>						
We have recently negotiated a line of credit with XYZ Bank (a copy of the fully executed line of credit agreement has been included with our application) and this funding will allow us to purchase necessary equipment and pay for employees and other Operating Costs during our start-up period and the first few years of operations. We expect that our business operation will be self funded (i.e., revenue from operations will cover all anticipated costs and capital expenditures) by the second half of our second year in operation; we also expect to become profitable with positive cash flow in year three.						
<b>General Comments regarding contingencies:</b>						
Although we expect to be cash flow positive by the end of year 2, the recently negotiated line of credit will cover our operating costs for the first 4 years of operation if necessary. We have also entered into an agreement with XYZ Co. to assume our registrants should our business model not have the ability to sustain itself in future years. Agreement with XYZ Co. has been included with our application. A full description of risks and a range of potential outcomes and impacts are included in our responses to Question 49. These responses have quantified the impacts of certain probabilities and our negotiated funding and action plans as shown. are adequate to fund our Worst Case Scenario.						

Template 1 - Financial Projections: Most Likely						Comments / Notes
In local currency (unless noted otherwise)						Provide name of local currency used.
Sec.	Reference / Formula	Start-up Costs	Live / Operational			
			Year 1	Year 2	Year 3	
<b>I) Projected Cash inflows and outflows</b>						
A)	Forecasted registration volume					
B)	Registration fee					
C)	Registration cash inflows					
D)	Other cash inflows					
	E) Total Cash Inflows					
<b>Projected Operating Cash Outflows</b>						
F) Labor:						
i)	Marketing Labor					
ii)	Customer Support Labor					
iii)	Technical Labor					
G)	Marketing					
H)	Facilities					
I)	General & Administrative					
J)	Interest and Taxes					
K)	Outsourcing Operating Costs, if any (list the type of activities being outsourced):					
i)	(list type of activities being outsourced)					
ii)	(list type of activities being outsourced)					
iii)	(list type of activities being outsourced)					
iv)	(list type of activities being outsourced)					
v)	(list type of activities being outsourced)					
vi)	(list type of activities being outsourced)					
L)	Other Operating costs					
	M) Total Operating Cash Outflows					
	N) Projected Net Operating Cash flow					
<b>IIa) Break out of Fixed and Variable Operating Cash Outflows</b>						
A)	Total Variable Operating Costs					
B)	Total Fixed Operating Costs					
	C) Total Operating Cash Outflows					
		CHECK				
<b>IIb) Break out of Critical Function Operating Cash Outflows</b>						
A)	Operation of SRS					
B)	Provision of Whois					
C)	DNS Resolution for Registered Domain Names					
D)	Registry Data Escrow					
E)	Maintenance of Zone in accordance with DNSSEC					
	G) Total Critical Registry Function Cash Outflows					
	H) 3-year Total					
<b>III) Projected Capital Expenditures</b>						
A)	Hardware					
B)	Software					
C)	Furniture & Other Equipment					
D)	Outsourcing Capital Expenditures, if any (list the type of capital expenditures)					
i)						
ii)						
iii)						
iv)						
v)						
vi)						
E)	Other Capital Expenditures					
	F) Total Capital Expenditures					
<b>IV) Projected Assets &amp; Liabilities</b>						
A) Cash						
B) Accounts receivable						
C) Other current assets						
	D) Total Current Assets					
E) Accounts payable						
F) Short-term Debt						
G) Other Current Liabilities						
	H) Total Current Liabilities					
I) Total Property, Plant & Equipment (PP&E)						
J) 3-year Reserve						
K) Other Long-term Assets						
	L) Total Long-term Assets					
M) Total Long-term Debt						
<b>V) Projected Cash flow (excl. 3-year Reserve)</b>						
A) Net operating cash flows						
B) Capital expenditures						
C) Change in Non Cash Current Assets						
D) Change in Total Current Liabilities						
E) Debt Adjustments						
F) Other Adjustments						
	G) Projected Net Cash flow					
<b>VI) Sources of funds</b>						
A) Debt:						
i) On-hand at time of application						
ii) Contingent and/or committed but not yet on-hand						
B) Equity:						
i) On-hand at time of application						
ii) Contingent and/or committed but not yet on-hand						
	C) Total Sources of funds					
General Comments (Notes Regarding Assumptions Used, Significant Variances Between Years, etc.):						
Comments regarding how the Applicant plans to Fund operations:						
General Comments regarding contingencies:						

Template 2 - Financial Projections: Worst Case						Provide name of local currency used.
In local currency (unless noted otherwise)			Live / Operational			
Sec.	Reference / Formula	Start-up Costs	Year 1	Year 2	Year 3	
I)	Projected Cash inflows and outflows					
	A) Forecasted registration volume					
	B) Registration fee					
	C) Registration cash inflows					
	D) Other cash inflows					
	E) Total Cash Inflows					
	Projected Operating Cash Outflows					
	F) Labor:					
	i) Marketing Labor					
	ii) Customer Support Labor					
	iii) Technical Labor					
	G) Marketing					
	H) Facilities					
	I) General & Administrative					
	J) Interest and Taxes					
	K) Outsourcing Operating Costs, if any (list the type of activities being outsourced):					
	i) (list type of activities being outsourced)					
	ii) (list type of activities being outsourced)					
	iii) (list type of activities being outsourced)					
	iv) (list type of activities being outsourced)					
	v) (list type of activities being outsourced)					
	vi) (list type of activities being outsourced)					
	L) Other Operating costs					
	M) Total Operating Cash Outflows					
	N) Projected Net Operating Cash flow					
IIa)	Break out of Fixed and Variable Operating Cash Outflows					
	A) Total Variable Operating Costs					
	B) Total Fixed Operating Costs					
	C) Total Operating Cash Outflows					
		CHECK				
IIb)	Break out of Critical Function Operating Cash Outflows					
	A) Operation of SRS					
	B) Provision of Whois					
	C) DNS Resolution for Registered Domain Names					
	D) Registry Data Escrow					
	E) Maintenance of Zone in accordance with DNSSEC					
	G) Total Critical Registry Function Cash Outflows					
	H) 3-year Total					
III)	Projected Capital Expenditures					
	A) Hardware					
	B) Software					
	C) Furniture & Other Equipment					
	D) Outsourcing Capital Expenditures, if any (list the type of capital expenditures)					
	i)					
	ii)					
	iii)					
	iv)					
	v)					
	vi)					
	E) Other Capital Expenditures					
	F) Total Capital Expenditures					
IV)	Projected Assets & Liabilities					
	A) Cash					
	B) Accounts receivable					
	C) Other current assets					
	D) Total Current Assets					
	E) Accounts payable					
	F) Short-term Debt					
	G) Other Current Liabilities					
	H) Total Current Liabilities					
	I) Total Property, Plant & Equipment (PP&E)					
	J) 3-year Reserve					
	K) Other Long-term Assets					
	L) Total Long-term Assets					
	M) Total Long-term Debt					
V)	Projected Cash flow (excl. 3-year Reserve)					
	A) Net operating cash flows					
	B) Capital expenditures					
	C) Change in Non Cash Current Assets	n/a				
	D) Change in Total Current Liabilities					
	E) Debt Adjustments	n/a				
	F) Other Adjustments					
	G) Projected Net Cash flow					
VI)	Sources of funds					
	A) Debt:					
	i) On-hand at time of application					
	ii) Contingent and/or committed but not yet on-hand					
	B) Equity:					
	i) On-hand at time of application					
	ii) Contingent and/or committed but not yet on-hand					
	C) Total Sources of funds					
General Comments (Notes Regarding Assumptions Used, Significant Variances Between Years, etc.):						
Comments regarding how the Applicant plans to Fund operations:						
General Comments regarding contingencies:						



# Applicant Guidebook

(30 May 2011)

## Module 3

Potential applicants should be aware that this version of the Guidebook is for consideration and not yet approved. The proposed details of the New gTLD Program remain subject to further consultation and revision.

30 May 2011

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# Module 3

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## Objection Procedures

This module describes two types of mechanisms that may affect an application:

- I. The procedure by which ICANN's Governmental Advisory Committee may provide GAC Advice on New gTLDs to the ICANN Board of Directors concerning a specific application. This module describes the purpose of this procedure, and how GAC Advice on New gTLDs is considered by the ICANN Board once received.
- II. The dispute resolution procedure triggered by a formal objection to an application by a third party. This module describes the purpose of the objection and dispute resolution mechanisms, the grounds for lodging a formal objection to a gTLD application, the general procedures for filing or responding to an objection, and the manner in which dispute resolution proceedings are conducted.

This module also discusses the guiding principles, or standards, that each dispute resolution panel will apply in reaching its expert determination.

All applicants should be aware of the possibility that a formal objection may be filed against any application, and of the procedures and options available in the event of such an objection.

### 3.1 GAC Advice on New gTLDs

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ICANN's Governmental Advisory Committee was formed to consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN's policies and various laws and international agreements or where they may affect public policy issues.

The process for GAC Advice on New gTLDs is intended to address applications that are identified by governments to be problematic, e.g., that potentially violate national law or raise sensitivities.

GAC members can raise concerns about any application to the GAC. The GAC as a whole will consider concerns raised by GAC members, and agree on GAC advice to forward to the ICANN Board of Directors.

The GAC can provide advice on any application. For the Board to be able to consider the GAC advice during the evaluation process, the GAC advice would have to be submitted by the close of the Objection Filing Period (see Module 1).

ICANN's transparency requirements indicate that GAC Advice on New gTLDs should identify objecting countries, the public policy basis for the objection, and the process by which consensus was reached. To be helpful to the Board, the explanation might include, for example, sources of data and the information on which the GAC relied in formulating its advice.

The GAC has expressed the intention to create, in discussion with the ICANN Board, "a mutually agreed and understandable formulation for the communication of actionable GAC consensus advice regarding proposed new gTLD strings."

GAC Advice may take several forms, among them:

- I. The GAC advises ICANN that it is the consensus<sup>1</sup> of the GAC that a particular application should not proceed, (or other terms created by the GAC to express that intent). This will create a strong presumption for ICANN that the application should not be approved. In the event that the ICANN Board determines to approve an application despite the consensus advice of the GAC, the GAC and the ICANN Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution. In the event the Board determines not to accept the GAC Advice, the Board will provide a rationale for its decision.
- II. The GAC provides advice that does not indicate the presence of a GAC consensus, or any advice that does not state that the application should not proceed (or other terms created by the GAC to express that intent). Such advice will be passed on to the applicant but will not create the presumption that the application should be denied, and such advice would not require the Board to undertake the process for attempting to find a

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<sup>1</sup> The GAC will clarify the basis on which consensus advice is developed.

mutually acceptable solution with the GAC should the application be approved. Note that in any case, that the Board will take seriously any other advice that GAC might provide.

- III. The GAC advises ICANN that GAC consensus is that an application should not proceed unless remediated (or other terms created by the GAC to express that intent). This will raise a strong presumption for the Board that the application should not proceed. If there is a remediation method available in the Guidebook (such as securing government approval), that action may be taken. However, material amendments to applications are generally prohibited and if there is no remediation method available, the application will not go forward and the applicant can re-apply in the second round.

Where GAC Advice on New gTLDs is received by the Board concerning an application, ICANN will publish the Advice and endeavor to notify the relevant applicant(s) promptly. The applicant will have a period of 21 calendar days from the publication date in which to submit a response to the ICANN Board.

ICANN will consider the GAC Advice on New gTLDs as soon as practicable. The Board may consult with independent experts, such as those designated to hear objections in the New gTLD Dispute Resolution Procedure, in cases where the issues raised in the GAC advice are pertinent to one of the subject matter areas of the objection procedures. The receipt of GAC advice will not toll the processing of any application (i.e., an application will not be suspended but will continue through the stages of the application process).

### ***3.2 Public Objection and Dispute Resolution Process***

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The independent dispute resolution process is designed to protect certain interests and rights. The process provides a path for formal objections during evaluation of the applications. It allows a party with standing to have its objection considered before a panel of qualified experts.

A formal objection can be filed only on four enumerated grounds, as described in this module. A formal objection initiates a dispute resolution proceeding. In filing an application for a gTLD, the applicant agrees to accept the applicability of this gTLD dispute resolution process.

Similarly, an objector accepts the applicability of this gTLD dispute resolution process by filing its objection.

As described in section 3.1 above, ICANN's Governmental Advisory Committee has a designated process for providing advice to the ICANN Board of Directors on matters affecting public policy issues, and these objection procedures would not be applicable in such a case. The GAC may provide advice on any topic and is not limited to the grounds for objection enumerated in the public objection and dispute resolution process.

### **3.2.1 Grounds for Objection**

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A formal objection may be filed on any one of the following four grounds:

***String Confusion Objection*** – The applied-for gTLD string is confusingly similar to an existing TLD or to another applied-for gTLD string in the same round of applications.

***Legal Rights Objection*** – The applied-for gTLD string infringes the existing legal rights of the objector.

***Limited Public Interest Objection*** – The applied-for gTLD string is contrary to generally accepted legal norms of morality and public order that are recognized under principles of international law.

***Community Objection*** – There is substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted.

The rationales for these objection grounds are discussed in the final report of the ICANN policy development process for new gTLDs. For more information on this process, see <http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-part-08aug07.htm>.

### **3.2.2 Standing to Object**

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Objectors must satisfy standing requirements to have their objections considered. As part of the dispute proceedings, all objections will be reviewed by a panel of experts designated by the applicable Dispute Resolution Service Provider (DRSP) to determine whether the objector has standing to object. Standing requirements for the four objection grounds are:

Objection ground	Who may object
String confusion	Existing TLD operator or gTLD applicant in current round
Legal rights	Rightsholders
Limited public interest	No limitations on who may file – however, subject to a “quick look” designed for early conclusion of frivolous and/or abusive objections
Community	Established institution associated with a clearly delineated community

### 3.2.2.1 *String Confusion Objection*

Two types of entities have standing to object:

- An existing TLD operator may file a string confusion objection to assert string confusion between an applied-for gTLD and the TLD that it currently operates.
- Any gTLD applicant in this application round may file a string confusion objection to assert string confusion between an applied-for gTLD and the gTLD for which it has applied, where string confusion between the two applicants has not already been found in the Initial Evaluation. That is, an applicant does not have standing to object to another application with which it is already in a contention set as a result of the Initial Evaluation.

In the case where an existing TLD operator successfully asserts string confusion with an applicant, the application will be rejected.

In the case where a gTLD applicant successfully asserts string confusion with another applicant, the only possible outcome is for both applicants to be placed in a contention set and to be referred to a contention resolution procedure (refer to Module 4, String Contention Procedures). If an objection by one gTLD applicant to another gTLD application is unsuccessful, the applicants may both move forward in the process without being considered in direct contention with one another.

### 3.2.2.2 *Legal Rights Objection*

A rightsholder has standing to file a legal rights objection. The source and documentation of the existing legal rights the objector is claiming (which may include either registered or unregistered trademarks) are infringed by the applied-for gTLD must be included in the filing.

An intergovernmental organization (IGO) is eligible to file a legal rights objection if it meets the criteria for registration of a .INT domain name<sup>2</sup>:

- a) An international treaty between or among national governments must have established the organization; and
- b) The organization that is established must be widely considered to have independent international legal personality and must be the subject of and governed by international law.

The specialized agencies of the UN and the organizations having observer status at the UN General Assembly are also recognized as meeting the criteria.

### 3.2.2.3 *Limited Public Interest Objection*

Anyone may file a Limited Public Interest Objection. Due to the inclusive standing base, however, objectors are subject to a “quick look” procedure designed to identify and eliminate frivolous and/or abusive objections. An objection found to be manifestly unfounded and/or an abuse of the right to object may be dismissed at any time.

A Limited Public Interest objection would be manifestly unfounded if it did not fall within one of the categories that have been defined as the grounds for such an objection (see subsection 3.5.3).

A Limited Public Interest objection that is manifestly unfounded may also be an abuse of the right to object. An objection may be framed to fall within one of the accepted categories for Limited Public Interest objections, but other facts may clearly show that the objection is abusive. For example, multiple objections filed by the same or related parties against a single applicant may constitute harassment of the applicant, rather than a legitimate defense of legal norms that are recognized under general principles of international law. An objection that attacks the applicant, rather than the applied-for string, could be an abuse of the right to object.<sup>3</sup>

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<sup>2</sup> See also <http://www.iana.org/domains/int/policy/>.

<sup>3</sup> The jurisprudence of the European Court of Human Rights offers specific examples of how the term “manifestly ill-founded” has been interpreted in disputes relating to human rights. Article 35(3) of the European Convention on Human Rights provides: “The Court shall declare inadmissible any individual application submitted under Article 34 which it considers incompatible with the provisions of the Convention or the protocols thereto, manifestly ill-founded, or an abuse of the right of application.” The ECHR renders reasoned decisions on admissibility, pursuant to Article 35 of the Convention. (Its decisions are published on the Court’s website <http://www.echr.coe.int>.) In some cases, the Court briefly states the facts and the law and then announces its decision, without discussion or analysis. E.g., Decision as to the Admissibility of Application No. 34328/96 by Egbert Peree against the

The quick look is the Panel's first task, after its appointment by the DRSP and is a review on the merits of the objection. The dismissal of an objection that is manifestly unfounded and/or an abuse of the right to object would be an Expert Determination, rendered in accordance with Article 21 of the New gTLD Dispute Resolution Procedure.

In the case where the quick look review does lead to the dismissal of the objection, the proceedings that normally follow the initial submissions (including payment of the full advance on costs) will not take place, and it is currently contemplated that the filing fee paid by the applicant would be refunded, pursuant to Procedure Article 14(e).

#### 3.2.2.4 Community Objection

Established institutions associated with clearly delineated communities are eligible to file a community objection. The community named by the objector must be a community strongly associated with the applied-for gTLD string in the application that is the subject of the objection. To qualify for standing for a community objection, the objector must prove both of the following:

***It is an established institution*** – Factors that may be considered in making this determination include, but are not limited to:

- Level of global recognition of the institution;
- Length of time the institution has been in existence; and
- Public historical evidence of its existence, such as the presence of a formal charter or national or international registration, or validation by a government, inter-governmental organization, or treaty. The institution must not have been established solely in conjunction with the gTLD application process.

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Netherlands (1998). In other cases, the Court reviews the facts and the relevant legal rules in detail, providing an analysis to support its conclusion on the admissibility of an application. Examples of such decisions regarding applications alleging violations of Article 10 of the Convention (freedom of expression) include: *Décision sur la recevabilité de la requête no 65831/01 présentée par Roger Garaudy contre la France* (2003); *Décision sur la recevabilité de la requête no 65297/01 présentée par Eduardo Fernando Alves Costa contre le Portugal* (2004).

The jurisprudence of the European Court of Human Rights also provides examples of the abuse of the right of application being sanctioned, in accordance with ECHR Article 35(3). See, for example, *Décision partielle sur la recevabilité de la requête no 61164/00 présentée par Gérard Durringer et autres contre la France et de la requête no 18589/02 contre la France* (2003).

***It has an ongoing relationship with a clearly delineated community*** – Factors that may be considered in making this determination include, but are not limited to:

- The presence of mechanisms for participation in activities, membership, and leadership;
- Institutional purpose related to the benefit of the associated community;
- Performance of regular activities that benefit the associated community; and
- The level of formal boundaries around the community.

The panel will perform a balancing of the factors listed above, as well as other relevant information, in making its determination. It is not expected that an objector must demonstrate satisfaction of each and every factor considered in order to satisfy the standing requirements.

### ***3.2.3 Dispute Resolution Service Providers***

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To trigger a dispute resolution proceeding, an objection must be filed by the posted deadline date, directly with the appropriate DRSP for each objection ground.

- The International Centre for Dispute Resolution has agreed in principle to administer disputes brought pursuant to string confusion objections.
- The Arbitration and Mediation Center of the World Intellectual Property Organization has agreed in principle to administer disputes brought pursuant to legal rights objections.
- The International Center of Expertise of the International Chamber of Commerce has agreed in principle to administer disputes brought pursuant to Limited Public Interest and Community Objections.

ICANN selected DRSPs on the basis of their relevant experience and expertise, as well as their willingness and ability to administer dispute proceedings in the new gTLD Program. The selection process began with a public call for expressions of interest<sup>4</sup> followed by dialogue with those candidates who responded. The call for expressions of interest specified several criteria for providers, including

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<sup>4</sup> See <http://www.icann.org/en/announcements/announcement-21dec07.htm>.

established services, subject matter expertise, global capacity, and operational capabilities. An important aspect of the selection process was the ability to recruit panelists who will engender the respect of the parties to the dispute.

### *3.2.4 Options in the Event of Objection*

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Applicants whose applications are the subject of an objection have the following options:

The applicant can work to reach a settlement with the objector, resulting in withdrawal of the objection or the application;

The applicant can file a response to the objection and enter the dispute resolution process (refer to Section 3.2); or

The applicant can withdraw, in which case the objector will prevail by default and the application will not proceed further.

If for any reason the applicant does not file a response to an objection, the objector will prevail by default.

### *3.2.5 Independent Objector*

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A formal objection to a gTLD application may also be filed by the Independent Objector (IO). The IO does not act on behalf of any particular persons or entities, but acts solely in the best interests of the public who use the global Internet.

In light of this public interest goal, the Independent Objector is limited to filing objections on the grounds of Limited Public Interest and Community.

Neither ICANN staff nor the ICANN Board of Directors has authority to direct or require the IO to file or not file any particular objection. If the IO determines that an objection should be filed, he or she will initiate and prosecute the objection in the public interest.

***Mandate and Scope*** - The IO may file objections against "highly objectionable" gTLD applications to which no objection has been filed. The IO is limited to filing two types of objections: (1) Limited Public Interest objections and (2) Community objections. The IO is granted standing to file objections on these enumerated grounds, notwithstanding the regular standing requirements for such objections (see subsection 3.1.2).

The IO may file a Limited Public Interest objection against an application even if a Community objection has been filed, and vice versa.

The IO may file an objection against an application, notwithstanding the fact that a String Confusion objection or a Legal Rights objection was filed.

Absent extraordinary circumstances, the IO is not permitted to file an objection to an application where an objection has already been filed on the same ground.

The IO may consider public comment when making an independent assessment whether an objection is warranted. The IO will have access to application comments received during the comment period.

In light of the public interest goal noted above, the IO shall not object to an application unless at least one comment in opposition to the application is made in the public sphere.

**Selection** – The IO will be selected by ICANN, through an open and transparent process, and retained as an independent consultant. The Independent Objector will be an individual with considerable experience and respect in the Internet community, unaffiliated with any gTLD applicant.

Although recommendations for IO candidates from the community are welcomed, the IO must be and remain independent and unaffiliated with any of the gTLD applicants. The various rules of ethics for judges and international arbitrators provide models for the IO to declare and maintain his/her independence.

The IO's (renewable) tenure is limited to the time necessary to carry out his/her duties in connection with a single round of gTLD applications.

**Budget and Funding** – The IO's budget would comprise two principal elements: (a) salaries and operating expenses, and (b) dispute resolution procedure costs – both of which should be funded from the proceeds of new gTLD applications.

As an objector in dispute resolution proceedings, the IO is required to pay filing and administrative fees, as well as advance payment of costs, just as all other objectors are required to do. Those payments will be refunded by the DRSP in cases where the IO is the prevailing party.

In addition, the IO will incur various expenses in presenting objections before DRSP panels that will not be refunded, regardless of the outcome. These expenses include the fees and expenses of outside counsel (if retained) and the costs of legal research or factual investigations.

### 3.3 Filing Procedures

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The information included in this section provides a summary of procedures for filing:

- Objections; and
- Responses to objections.

For a comprehensive statement of filing requirements applicable generally, refer to the New gTLD Dispute Resolution Procedure (“Procedure”) included as an attachment to this module. In the event of any discrepancy between the information presented in this module and the Procedure, the Procedure shall prevail.

Note that the rules and procedures of each DRSP specific to each objection ground must also be followed.

- For a String Confusion Objection, the applicable DRSP Rules are the ICDR Supplementary Procedures for ICANN’s New gTLD Program. These rules are available in draft form and have been posted along with this module.
- For a Legal Rights Objection, the applicable DRSP Rules are the WIPO Rules for New gTLD Dispute Resolution. These rules are available in draft form and have been posted along with this module.
- For a Limited Public Interest Objection, the applicable DRSP Rules are the Rules for Expertise of the International Chamber of Commerce.<sup>5</sup>
- For a Community Objection, the applicable DRSP Rules are the Rules for Expertise of the International Chamber of Commerce.<sup>6</sup>

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<sup>5</sup> See <http://www.iccwbo.org/court/expertise/id4379/index.html>

<sup>6</sup> *Ibid.*

### 3.3.1 *Objection Filing Procedures*

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The procedures outlined in this subsection must be followed by any party wishing to file a formal objection to an application that has been posted by ICANN. Should an applicant wish to file a formal objection to another gTLD application, it would follow these same procedures.

- All objections must be filed electronically with the appropriate DRSP by the posted deadline date. Objections will not be accepted by the DRSPs after this date.
- All objections must be filed in English.
- Each objection must be filed separately. An objector wishing to object to several applications must file a separate objection and pay the accompanying filing fees for each application that is the subject of an objection. If an objector wishes to object to an application on more than one ground, the objector must file separate objections and pay the accompanying filing fees for each objection ground.

Each objection filed by an objector must include:

- The name and contact information of the objector.
- A statement of the objector's basis for standing; that is, why the objector believes it meets the standing requirements to object.
- A description of the basis for the objection, including:
  - A statement giving the specific ground upon which the objection is being filed.
  - A detailed explanation of the validity of the objection and why it should be upheld.
- Copies of any documents that the objector considers to be a basis for the objection.

Objections are limited to 5000 words or 20 pages, whichever is less, excluding attachments.

An objector must provide copies of all submissions to the DRSP associated with the objection proceedings to the applicant.

The DRSP will publish, and regularly update a list on its website identifying all objections as they are filed. ICANN will post on its website a notice of all objections filed once the objection filing period has closed.

### **3.3.2 Objection Filing Fees**

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At the time an objection is filed, the objector is required to pay a filing fee in the amount set and published by the relevant DRSP. If the filing fee is not paid, the DRSP will dismiss the objection without prejudice. See Section 1.5 of Module 1 regarding fees.

Funding from ICANN for objection filing fees, as well as for advance payment of costs (see subsection 3.4.7 below) is available to the At-Large Advisory Committee (ALAC). Funding for ALAC objection filing and dispute resolution fees is contingent on publication by ALAC of its approved process for considering and making objections. At a minimum, the process for objecting to a gTLD application will require: bottom-up development of potential objections, discussion and approval of objections at the Regional At-Large Organization (RALO) level, and a process for consideration and approval of the objection by the At-Large Advisory Committee.

Funding from ICANN for objection filing fees, as well as for advance payment of costs, is available to individual national governments in the amount of USD 50,000 with the guarantee that a minimum of one objection per government will be fully funded by ICANN where requested. ICANN will develop a procedure for application and disbursement of funds.

Funding available from ICANN is to cover costs payable to the dispute resolution service provider and made directly to the dispute resolution service provider; it does not cover other costs such as fees for legal advice.

### **3.3.3 Response Filing Procedures**

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Upon notification that ICANN has published the list of all objections filed (refer to subsection 3.3.1), the DRSPs will notify the parties that responses must be filed within 30 calendar days of receipt of that notice. DRSPs will not accept late responses. Any applicant that fails to respond to an objection within the 30-day response period will be in default, which will result in the objector prevailing.

- All responses must be filed in English.
- Each response must be filed separately. That is, an applicant responding to several objections must file

a separate response and pay the accompanying filing fee to respond to each objection.

- Responses must be filed electronically.

Each response filed by an applicant must include:

- The name and contact information of the applicant.
- A point-by-point response to the claims made by the objector.
- Any copies of documents that it considers to be a basis for the response.

Responses are limited to 5000 words or 20 pages, whichever is less, excluding attachments.

Each applicant must provide copies of all submissions to the DRSP associated with the objection proceedings to the objector.

### ***3.3.4 Response Filing Fees***

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At the time an applicant files its response, it is required to pay a filing fee in the amount set and published by the relevant DRSP, which will be the same as the filing fee paid by the objector. If the filing fee is not paid, the response will be disregarded, which will result in the objector prevailing.

## ***3.4 Objection Processing Overview***

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The information below provides an overview of the process by which DRSPs administer dispute proceedings that have been initiated. For comprehensive information, please refer to the New gTLD Dispute Resolution Procedure (included as an attachment to this module).

### ***3.4.1 Administrative Review***

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Each DRSP will conduct an administrative review of each objection for compliance with all procedural rules within 14 calendar days of receiving the objection. Depending on the number of objections received, the DRSP may ask ICANN for a short extension of this deadline.

If the DRSP finds that the objection complies with procedural rules, the objection will be deemed filed, and the proceedings will continue. If the DRSP finds that the objection does not comply with procedural rules, the DRSP will dismiss the objection and close the proceedings without prejudice to the objector's right to submit a new

objection that complies with procedural rules. The DRSP's review or rejection of the objection will not interrupt the time limit for filing an objection.

### ***3.4.2 Consolidation of Objections***

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Once the DRSP receives and processes all objections, at its discretion the DRSP may elect to consolidate certain objections. The DRSP shall endeavor to decide upon consolidation prior to issuing its notice to applicants that the response should be filed and, where appropriate, shall inform the parties of the consolidation in that notice.

An example of a circumstance in which consolidation might occur is multiple objections to the same application based on the same ground.

In assessing whether to consolidate objections, the DRSP will weigh the efficiencies in time, money, effort, and consistency that may be gained by consolidation against the prejudice or inconvenience consolidation may cause. The DRSPs will endeavor to have all objections resolved on a similar timeline. It is intended that no sequencing of objections will be established.

New gTLD applicants and objectors also will be permitted to propose consolidation of objections, but it will be at the DRSP's discretion whether to agree to the proposal.

ICANN continues to strongly encourage all of the DRSPs to consolidate matters whenever practicable.

### ***3.4.3 Mediation***

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The parties to a dispute resolution proceeding are encouraged—but not required—to participate in mediation aimed at settling the dispute. Each DRSP has experts who can be retained as mediators to facilitate this process, should the parties elect to do so, and the DRSPs will communicate with the parties concerning this option and any associated fees.

If a mediator is appointed, that person may not serve on the panel constituted to issue an expert determination in the related dispute.

There are no automatic extensions of time associated with the conduct of negotiations or mediation. The parties may submit joint requests for extensions of time to the DRSP according to its procedures, and the DRSP or the panel, if appointed, will decide whether to grant the requests, although extensions will be discouraged. Absent

exceptional circumstances, the parties must limit their requests for extension to 30 calendar days.

The parties are free to negotiate without mediation at any time, or to engage a mutually acceptable mediator of their own accord.

#### ***3.4.4 Selection of Expert Panels***

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A panel will consist of appropriately qualified experts appointed to each proceeding by the designated DRSP. Experts must be independent of the parties to a dispute resolution proceeding. Each DRSP will follow its adopted procedures for requiring such independence, including procedures for challenging and replacing an expert for lack of independence.

There will be one expert in proceedings involving a string confusion objection.

There will be one expert, or, if all parties agree, three experts with relevant experience in intellectual property rights disputes in proceedings involving an existing legal rights objection.

There will be three experts recognized as eminent jurists of international reputation, with expertise in relevant fields as appropriate, in proceedings involving a Limited Public Interest objection.

There will be one expert in proceedings involving a community objection.

Neither the experts, the DRSP, ICANN, nor their respective employees, directors, or consultants will be liable to any party in any action for damages or injunctive relief for any act or omission in connection with any proceeding under the dispute resolution procedures.

#### ***3.4.5 Adjudication***

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The panel may decide whether the parties shall submit any written statements in addition to the filed objection and response, and may specify time limits for such submissions.

In order to achieve the goal of resolving disputes rapidly and at reasonable cost, procedures for the production of documents shall be limited. In exceptional cases, the panel may require a party to produce additional evidence.

Disputes will usually be resolved without an in-person hearing. The panel may decide to hold such a hearing only in extraordinary circumstances.

### 3.4.6 Expert Determination

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The DRSPs' final expert determinations will be in writing and will include:

- A summary of the dispute and findings;
- An identification of the prevailing party; and
- The reasoning upon which the expert determination is based.

Unless the panel decides otherwise, each DRSP will publish all decisions rendered by its panels in full on its website.

The findings of the panel will be considered an expert determination and advice that ICANN will accept within the dispute resolution process.

### 3.4.7 Dispute Resolution Costs

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Before acceptance of objections, each DRSP will publish a schedule of costs or statement of how costs will be calculated for the proceedings that it administers under this procedure. These costs cover the fees and expenses of the members of the panel and the DRSP's administrative costs.

ICANN expects that string confusion and legal rights objection proceedings will involve a fixed amount charged by the panelists while Limited Public Interest and community objection proceedings will involve hourly rates charged by the panelists.

Within ten (10) business days of constituting the panel, the DRSP will estimate the total costs and request advance payment in full of its costs from both the objector and the applicant. Each party must make its advance payment within ten (10) days of receiving the DRSP's request for payment and submit to the DRSP evidence of such payment. The respective filing fees paid by the parties will be credited against the amounts due for this advance payment of costs.

The DRSP may revise its estimate of the total costs and request additional advance payments from the parties during the resolution proceedings.

Additional fees may be required in specific circumstances; for example, if the DRSP receives supplemental submissions or elects to hold a hearing.

If an objector fails to pay these costs in advance, the DRSP will dismiss its objection and no fees paid by the objector will be refunded.

If an applicant fails to pay these costs in advance, the DRSP will sustain the objection and no fees paid by the applicant will be refunded.

After the hearing has taken place and the panel renders its expert determination, the DRSP will refund the advance payment of costs to the prevailing party.

### **3.5 Dispute Resolution Principles (Standards)**

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Each panel will use appropriate general principles (standards) to evaluate the merits of each objection. The principles for adjudication on each type of objection are specified in the paragraphs that follow. The panel may also refer to other relevant rules of international law in connection with the standards.

The objector bears the burden of proof in each case.

The principles outlined below are subject to evolution based on ongoing consultation with DRSPs, legal experts, and the public.

#### **3.5.1 String Confusion Objection**

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A DRSP panel hearing a string confusion objection will consider whether the applied-for gTLD string is likely to result in string confusion. String confusion exists where a string so nearly resembles another that it is likely to deceive or cause confusion. For a likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the average, reasonable Internet user. Mere association, in the sense that the string brings another string to mind, is insufficient to find a likelihood of confusion.

#### **3.5.2 Legal Rights Objection**

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In interpreting and giving meaning to GNSO Recommendation 3 ("Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law"), a DRSP panel of experts presiding over a legal rights objection will determine whether the potential use of the applied-for gTLD by the applicant takes unfair advantage of the distinctive character or the reputation of the objector's registered or unregistered trademark or service mark ("mark") or IGO name or acronym (as

identified in the treaty establishing the organization), or unjustifiably impairs the distinctive character or the reputation of the objector's mark or IGO name or acronym, or otherwise creates an impermissible likelihood of confusion between the applied-for gTLD and the objector's mark or IGO name or acronym.

In the case where the objection is based on trademark rights, the panel will consider the following non-exclusive factors:

1. Whether the applied-for gTLD is identical or similar, including in appearance, phonetic sound, or meaning, to the objector's existing mark.
2. Whether the objector's acquisition and use of rights in the mark has been bona fide.
3. Whether and to what extent there is recognition in the relevant sector of the public of the sign corresponding to the gTLD, as the mark of the objector, of the applicant or of a third party.
4. Applicant's intent in applying for the gTLD, including whether the applicant, at the time of application for the gTLD, had knowledge of the objector's mark, or could not have reasonably been unaware of that mark, and including whether the applicant has engaged in a pattern of conduct whereby it applied for or operates TLDs or registrations in TLDs which are identical or confusingly similar to the marks of others.
5. Whether and to what extent the applicant has used, or has made demonstrable preparations to use, the sign corresponding to the gTLD in connection with a bona fide offering of goods or services or a bona fide provision of information in a way that does not interfere with the legitimate exercise by the objector of its mark rights.
6. Whether the applicant has marks or other intellectual property rights in the sign corresponding to the gTLD, and, if so, whether any acquisition of such a right in the sign, and use of the sign, has been bona fide, and whether the purported or likely use of the gTLD by the applicant is consistent with such acquisition or use.
7. Whether and to what extent the applicant has been commonly known by the sign corresponding to the gTLD, and if so, whether any purported or likely use of the gTLD by the applicant is consistent therewith and bona fide.

8. Whether the applicant's intended use of the gTLD would create a likelihood of confusion with the objector's mark as to the source, sponsorship, affiliation, or endorsement of the gTLD.

In the case where a legal rights objection has been filed by an IGO, the panel will consider the following non-exclusive factors:

1. Whether the applied-for gTLD is identical or similar, including in appearance, phonetic sound or meaning, to the name or acronym of the objecting IGO;
2. Historical coexistence of the IGO and the applicant's use of a similar name or acronym. Factors considered may include:
  - a. Level of global recognition of both entities;
  - b. Length of time the entities have been in existence;
  - c. Public historical evidence of their existence, which may include whether the objecting IGO has communicated its name or abbreviation under Article 6 *ter* of the Paris Convention for the Protection of Industrial Property.
3. Whether and to what extent the applicant has used, or has made demonstrable preparations to use, the sign corresponding to the TLD in connection with a bona fide offering of goods or services or a bona fide provision of information in a way that does not interfere with the legitimate exercise of the objecting IGO's name or acronym;
4. Whether and to what extent the applicant has been commonly known by the sign corresponding to the applied-for gTLD, and if so, whether any purported or likely use of the gTLD by the applicant is consistent therewith and bona fide; and
5. Whether the applicant's intended use of the applied-for gTLD would create a likelihood of confusion with the objecting IGO's name or acronym as to the source, sponsorship, affiliation, or endorsement of the TLD.

### ***3.5.3 Limited Public Interest Objection***

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An expert panel hearing a Limited Public Interest objection will consider whether the applied-for gTLD string is contrary to general principles of international law for morality and public order.

Examples of instruments containing such general principles include:

- The Universal Declaration of Human Rights (UDHR)
- The International Covenant on Civil and Political Rights (ICCPR)
- The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- The International Convention on the Elimination of All Forms of Racial Discrimination
- Declaration on the Elimination of Violence against Women
- The International Covenant on Economic, Social, and Cultural Rights
- The Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment
- The International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families
- Slavery Convention
- Convention on the Prevention and Punishment of the Crime of Genocide
- Convention on the Rights of the Child

Note that these are included to serve as examples, rather than an exhaustive list. It should be noted that these instruments vary in their ratification status. Additionally, states may limit the scope of certain provisions through reservations and declarations indicating how they will interpret and apply certain provisions. National laws not based on principles of international law are not a valid ground for a Limited Public Interest objection.

Under these principles, everyone has the right to freedom of expression, but the exercise of this right carries with it special duties and responsibilities. Accordingly, certain limited restrictions may apply.

The grounds upon which an applied-for gTLD string may be considered contrary to generally accepted legal norms relating to morality and public order that are recognized under principles of international law are:

- Incitement to or promotion of violent lawless action;

- Incitement to or promotion of discrimination based upon race, color, gender, ethnicity, religion or national origin, or other similar types of discrimination that violate generally accepted legal norms recognized under principles of international law;
- Incitement to or promotion of child pornography or other sexual abuse of children; or
- A determination that an applied-for gTLD string would be contrary to specific principles of international law as reflected in relevant international instruments of law.

The panel will conduct its analysis on the basis of the applied-for gTLD string itself. The panel may, if needed, use as additional context the intended purpose of the TLD as stated in the application.

#### **3.5.4 Community Objection**

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The four tests described here will enable a DRSP panel to determine whether there is substantial opposition from a significant portion of the community to which the string may be targeted. For an objection to be successful, the objector must prove that:

- The community invoked by the objector is a clearly delineated community; and
- Community opposition to the application is substantial; and
- There is a strong association between the community invoked and the applied-for gTLD string; and
- The application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted. Each of these tests is described in further detail below.

**Community** – The objector must prove that the community expressing opposition can be regarded as a clearly delineated community. A panel could balance a number of factors to determine this, including but not limited to:

- The level of public recognition of the group as a community at a local and/or global level;

- The level of formal boundaries around the community and what persons or entities are considered to form the community;
- The length of time the community has been in existence;
- The global distribution of the community (this may not apply if the community is territorial); and
- The number of people or entities that make up the community.

If opposition by a number of people/entities is found, but the group represented by the objector is not determined to be a clearly delineated community, the objection will fail.

**Substantial Opposition** – The objector must prove substantial opposition within the community it has identified itself as representing. A panel could balance a number of factors to determine whether there is substantial opposition, including but not limited to:

- Number of expressions of opposition relative to the composition of the community;
- The representative nature of entities expressing opposition;
- Level of recognized stature or weight among sources of opposition;
- Distribution or diversity among sources of expressions of opposition, including:
  - Regional
  - Subsectors of community
  - Leadership of community
  - Membership of community
- Historical defense of the community in other contexts; and
- Costs incurred by objector in expressing opposition, including other channels the objector may have used to convey opposition.

If some opposition within the community is determined, but it does not meet the standard of substantial opposition, the objection will fail.

**Targeting** – The objector must prove a strong association between the applied-for gTLD string and the community represented by the objector. Factors that could be balanced by a panel to determine this include but are not limited to:

- Statements contained in application;
- Other public statements by the applicant;
- Associations by the public.

If opposition by a community is determined, but there is no strong association between the community and the applied-for gTLD string, the objection will fail.

**Detriment** – The objector must prove that the application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted. An allegation of detriment that consists only of the applicant being delegated the string instead of the objector will not be sufficient for a finding of material detriment.

Factors that could be used by a panel in making this determination include but are not limited to:

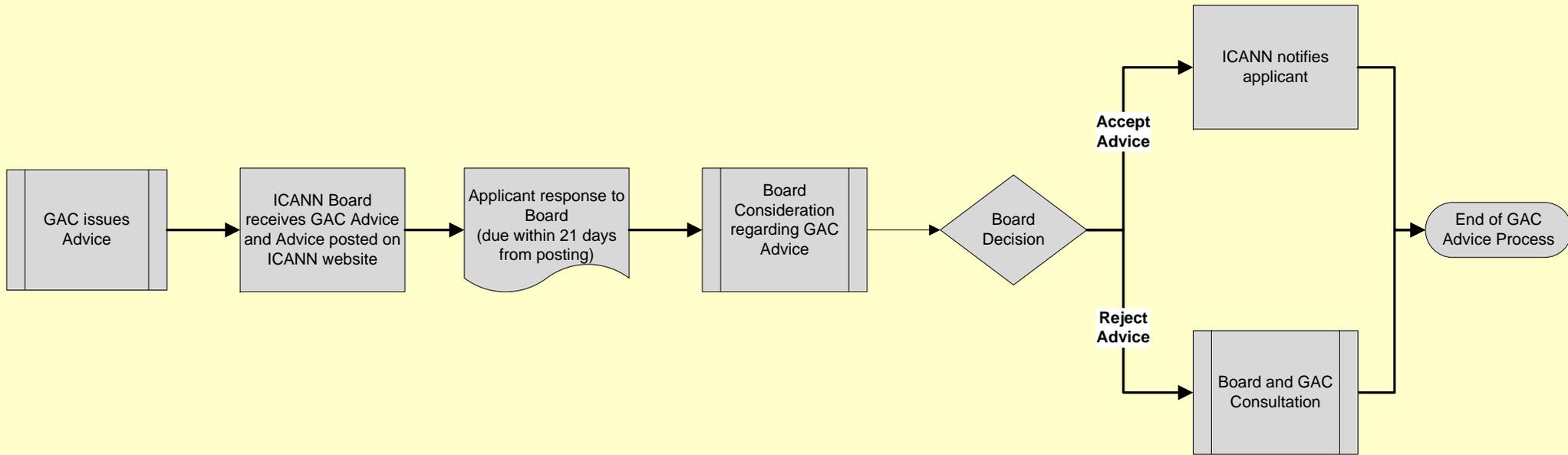
- Nature and extent of damage to the reputation of the community represented by the objector that would result from the applicant's operation of the applied-for gTLD string;
- Evidence that the applicant is not acting or does not intend to act in accordance with the interests of the community or of users more widely, including evidence that the applicant has not proposed or does not intend to institute effective security protection for user interests;
- Interference with the core activities of the community that would result from the applicant's operation of the applied-for gTLD string;
- Dependence of the community represented by the objector on the DNS for its core activities;
- Nature and extent of concrete or economic damage to the community represented by the objector that would result from the applicant's operation of the applied-for gTLD string; and

- Level of certainty that alleged detrimental outcomes would occur.

If opposition by a community is determined, but there is no likelihood of material detriment to the targeted community resulting from the applicant's operation of the applied-for gTLD, the objection will fail.

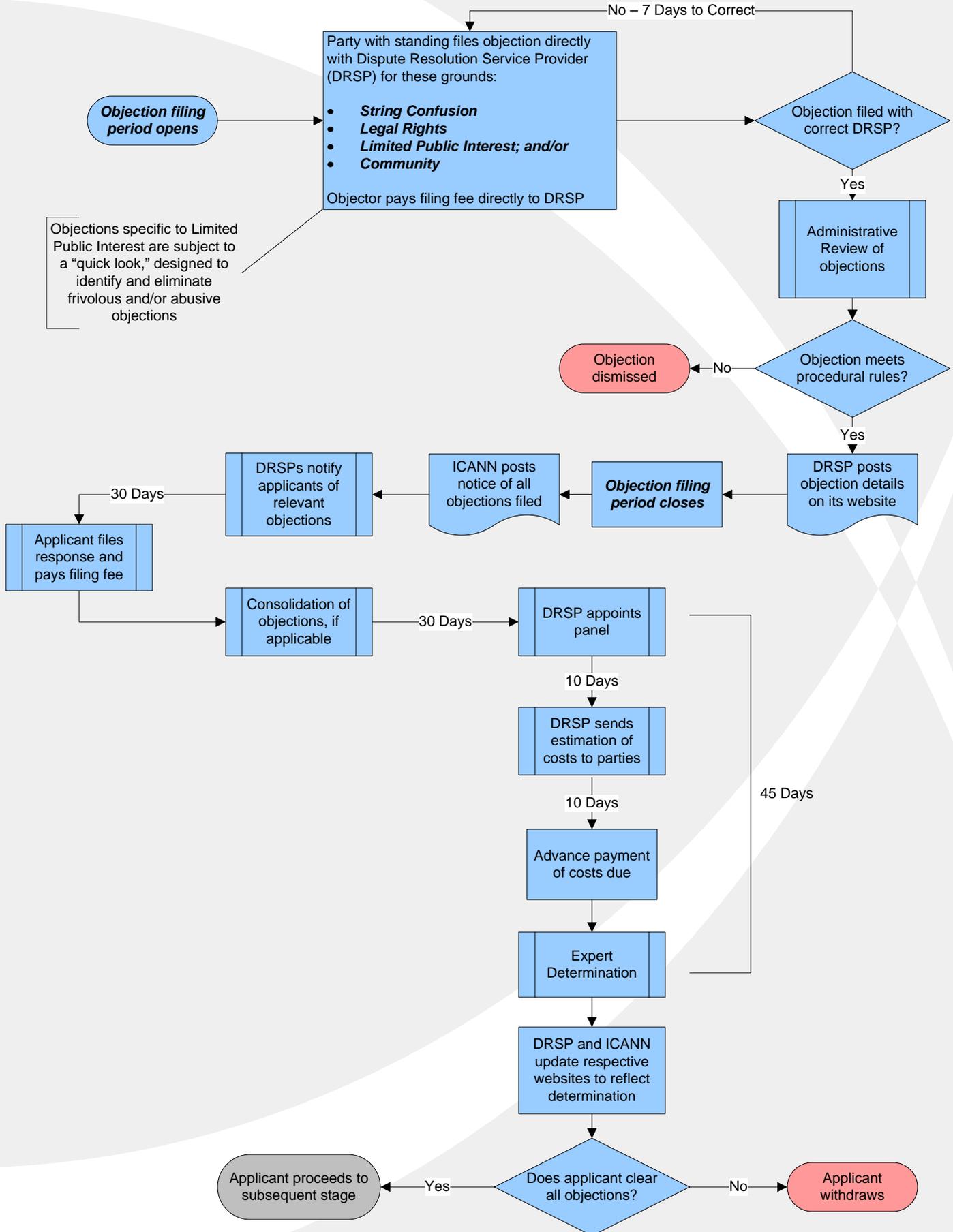
The objector must meet all four tests in the standard for the objection to prevail.

# Draft – New gTLD Program - GAC Advice on New gTLDs



Note: Process depicts scenario in which GAC issues consensus advice that an application should not proceed

# DRAFT - New gTLD Program – Objection and Dispute Resolution



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# *Attachment to Module 3*

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## *New gTLD Dispute Resolution Procedure*

These Procedures were designed with an eye toward timely and efficient dispute resolution. As part of the New gTLD Program, these Procedures apply to all proceedings administered by each of the dispute resolution service providers (DRSP). Each of the DRSPs has a specific set of rules that will also apply to such proceedings.

## **NEW gTLD DISPUTE RESOLUTION PROCEDURE**

### **Article 1. ICANN's New gTLD Program**

- (a) The Internet Corporation for Assigned Names and Numbers ("ICANN") has implemented a program for the introduction of new generic Top-Level Domain Names ("gTLDs") in the internet. There will be a succession of rounds, during which applicants may apply for new gTLDs, in accordance with terms and conditions set by ICANN.
- (b) The new gTLD program includes a dispute resolution procedure, pursuant to which disputes between a person or entity who applies for a new gTLD and a person or entity who objects to that gTLD are resolved in accordance with this New gTLD Dispute Resolution Procedure (the "Procedure").
- (c) Dispute resolution proceedings shall be administered by a Dispute Resolution Service Provider ("DRSP") in accordance with this Procedure and the applicable DRSP Rules that are identified in Article 4(b).
- (d) By applying for a new gTLD, an applicant accepts the applicability of this Procedure and the applicable DRSP's Rules that are identified in Article 4(b); by filing an objection to a new gTLD, an objector accepts the applicability of this Procedure and the applicable DRSP's Rules that are identified in Article 4(b). The parties cannot derogate from this Procedure without the express approval of ICANN and from the applicable DRSP Rules without the express approval of the relevant DRSP.

### **Article 2. Definitions**

- (a) The "Applicant" or "Respondent" is an entity that has applied to ICANN for a new gTLD and that will be the party responding to the Objection.
- (b) The "Objector" is one or more persons or entities who have filed an objection against a new gTLD for which an application has been submitted.
- (c) The "Panel" is the panel of Experts, comprising one or three "Experts," that has been constituted by a DRSP in accordance with this Procedure and the applicable DRSP Rules that are identified in Article 4(b).
- (d) The "Expert Determination" is the decision upon the merits of the Objection that is rendered by a Panel in a proceeding conducted under this Procedure and the applicable DRSP Rules that are identified in Article 4(b).
- (e) The grounds upon which an objection to a new gTLD may be filed are set out in full in Module 3 of the Applicant Guidebook. Such grounds are identified in this Procedure, and are based upon the Final Report on the Introduction of New Generic Top-Level Domains, dated 7 August 2007, issued by the ICANN Generic Names Supporting Organization (GNSO), as follows:
  - (i) "String Confusion Objection" refers to the objection that the string comprising the potential gTLD is confusingly similar to an existing top-level domain or another string applied for in the same round of applications.
  - (ii) "Existing Legal Rights Objection" refers to the objection that the string comprising the potential new gTLD infringes the existing legal rights of others

that are recognized or enforceable under generally accepted and internationally recognized principles of law.

- (iii) "Limited Public Interest Objection" refers to the objection that the string comprising the potential new gTLD is contrary to generally accepted legal norms relating to morality and public order that are recognized under principles of international law.
  - (iv) "Community Objection" refers to the objection that there is substantial opposition to the application from a significant portion of the community to which the string may be explicitly or implicitly targeted.
- (f) "DRSP Rules" are the rules of procedure of a particular DRSP that have been identified as being applicable to objection proceedings under this Procedure.

### **Article 3. Dispute Resolution Service Providers**

The various categories of disputes shall be administered by the following DRSPs:

- (a) String Confusion Objections shall be administered by the International Centre for Dispute Resolution.
- (b) Existing Legal Rights Objections shall be administered by the Arbitration and Mediation Center of the World Intellectual Property Organization.
- (c) Limited Public Interest Objections shall be administered by the International Centre for Expertise of the International Chamber of Commerce.
- (d) Community Objections shall be administered by the International Centre for Expertise of the International Chamber of Commerce.

### **Article 4. Applicable Rules**

- (a) All proceedings before the Panel shall be governed by this Procedure and by the DRSP Rules that apply to a particular category of objection. The outcome of the proceedings shall be deemed an Expert Determination, and the members of the Panel shall act as experts.
- (b) The applicable DRSP Rules are the following:
  - (i) For a String Confusion Objection, the applicable DRSP Rules are the ICDR Supplementary Procedures for ICANN's New gTLD Program.
  - (ii) For an Existing Legal Rights Objection, the applicable DRSP Rules are the WIPO Rules for New gTLD Dispute Resolution.
  - (iii) For a Limited Public Interest Objection, the applicable DRSP Rules are the Rules for Expertise of the International Chamber of Commerce.
  - (iv) For a Community Objection, Objection, the applicable DRSP Rules are the Rules for Expertise of the International Chamber of Commerce.
- (c) In the event of any discrepancy between this Procedure and the applicable DRSP Rules, this Procedure shall prevail.

- (d) The place of the proceedings, if relevant, shall be the location of the DRSP that is administering the proceedings.
- (e) In all cases, the Panel shall ensure that the parties are treated with equality, and that each party is given a reasonable opportunity to present its position.

**Article 5. Language**

- (a) The language of all submissions and proceedings under this Procedure shall be English.
- (b) Parties may submit supporting evidence in its original language, provided and subject to the authority of the Panel to determine otherwise, that such evidence is accompanied by a certified or otherwise official English translation of all relevant text.

**Article 6. Communications and Time Limits**

- (a) All communications by the Parties with the DRSPs and Panels must be submitted electronically. A Party that wishes to make a submission that is not available in electronic form (e.g., evidentiary models) shall request leave from the Panel to do so, and the Panel, in its sole discretion, shall determine whether to accept the non-electronic submission.
- (b) The DRSP, Panel, Applicant, and Objector shall provide copies to one another of all correspondence (apart from confidential correspondence between the Panel and the DRSP and among the Panel) regarding the proceedings.
- (c) For the purpose of determining the date of commencement of a time limit, a notice or other communication shall be deemed to have been received on the day that it is transmitted in accordance with paragraphs (a) and (b) of this Article.
- (d) For the purpose of determining compliance with a time limit, a notice or other communication shall be deemed to have been sent, made or transmitted if it is dispatched in accordance with paragraphs (a) and (b) of this Article prior to or on the day of the expiration of the time limit.
- (e) For the purpose of calculating a period of time under this Procedure, such period shall begin to run on the day following the day when a notice or other communication is received.
- (f) Unless otherwise stated, all time periods provided in the Procedure are calculated on the basis of calendar days

**Article 7. Filing of the Objection**

- (a) A person wishing to object to a new gTLD for which an application has been submitted may file an objection ("Objection"). Any Objection to a proposed new gTLD must be filed before the published closing date for the Objection Filing period.
- (b) The Objection must be filed with the appropriate DRSP, using a model form made available by that DRSP, with copies to ICANN and the Applicant.
- (c) The electronic addresses for filing Objections (the specific addresses shall be made available once they are created by providers):
  - (i) A String Confusion Objection must be filed at: [●].

- (ii) An Existing Legal Rights Objection must be filed at: [●].
  - (iii) A Limited Public Interest Objection must be filed at: [●].
  - (iv) A Community Objection must be filed at: [●].
- (d) All Objections must be filed separately:
- (i) An Objector who wishes to object to an application on more than one ground must file separate objections with the appropriate DRSP(s).
  - (ii) An Objector who wishes to object to more than one gTLD must file separate objections to each gTLD with the appropriate DRSP(s).
- (e) If an Objection is filed with the wrong DRSP, that DRSP shall promptly notify the Objector of the error and that DRSP shall not process the incorrectly filed Objection. The Objector may then cure the error by filing its Objection with the correct DRSP within seven (7) days of its receipt of the error notice, failing which the Objection shall be disregarded. If the Objection is filed with the correct DRSP within seven (7) days of its receipt of the error notice but after the lapse of the time for submitting an Objection stipulation by Article 7(a) of this Procedure, it shall be deemed to be within this time limit.

## **Article 8. Content of the Objection**

- (a) The Objection shall contain, *inter alia*, the following information:
- (i) The names and contact information (address, telephone number, email address, etc.) of the Objector;
  - (ii) A statement of the Objector's basis for standing; and
  - (iii) A description of the basis for the Objection, including:
    - (aa) A statement of the ground upon which the Objection is being filed, as stated in Article 2(e) of this Procedure;
    - (bb) An explanation of the validity of the Objection and why the objection should be upheld.
- (b) The substantive portion of the Objection shall be limited to 5,000 words or 20 pages, whichever is less, excluding attachments. The Objector shall also describe and provide copies of any supporting or official documents upon which the Objection is based.
- (c) At the same time as the Objection is filed, the Objector shall pay a filing fee in the amount set in accordance with the applicable DRSP Rules and include evidence of such payment in the Objection. In the event that the filing fee is not paid within ten (10) days of the receipt of the Objection by the DRSP, the Objection shall be dismissed without prejudice.

## **Article 9. Administrative Review of the Objection**

- (a) The DRSP shall conduct an administrative review of the Objection for the purpose of verifying compliance with Articles 5-8 of this Procedure and the applicable DRSP Rules, and inform the Objector, the Applicant and ICANN of the result of its review within

fourteen (14) days of its receipt of the Objection. The DRSP may extend this time limit for reasons explained in the notification of such extension.

- (b) If the DRSP finds that the Objection complies with Articles 5-8 of this Procedure and the applicable DRSP Rules, the DRSP shall confirm that the Objection shall be registered for processing.
- (c) If the DRSP finds that the Objection does not comply with Articles 5-8 of this Procedure and the applicable DRSP Rules, the DRSP shall have the discretion to request that any administrative deficiencies in the Objection be corrected within five (5) days. If the deficiencies in the Objection are cured within the specified period but after the lapse of the time limit for submitting an Objection stipulated by Article 7(a) of this Procedure, the Objection shall be deemed to be within this time limit.
- (d) If the DRSP finds that the Objection does not comply with Articles 5-8 of this Procedure and the applicable DRSP Rules, and the deficiencies in the Objection are not corrected within the period specified in Article 9(c), the DRSP shall dismiss the Objection and close the proceedings, without prejudice to the Objector's submission of a new Objection that complies with this Procedure, provided that the Objection is filed within the deadline for filing such Objections. The DRSP's review of the Objection shall not interrupt the running of the time limit for submitting an Objection stipulated by Article 7(a) of this Procedure.
- (e) Immediately upon registering an Objection for processing, pursuant to Article 9(b), the DRSP shall post the following information about the Objection on its website: (i) the proposed string to which the Objection is directed; (ii) the names of the Objector and the Applicant; (iii) the grounds for the Objection; and (iv) the dates of the DRSP's receipt of the Objection.

#### **Article 10. ICANN's Dispute Announcement**

- (a) Within thirty (30) days of the deadline for filing Objections in relation to gTLD applications in a given round, ICANN shall publish a document on its website identifying all of the admissible Objections that have been filed (the "Dispute Announcement"). ICANN shall also directly inform each DRSP of the posting of the Dispute Announcement.
- (b) ICANN shall monitor the progress of all proceedings under this Procedure and shall take steps, where appropriate, to coordinate with any DRSP in relation to individual applications for which objections are pending before more than one DRSP.

#### **Article 11. Response to the Objection**

- (a) Upon receipt of the Dispute Announcement, each DRSP shall promptly send a notice to: (i) each Applicant for a new gTLD to which one or more admissible Objections have been filed with that DRSP; and (ii) the respective Objector(s).
- (b) The Applicant shall file a response to each Objection (the "Response"). The Response shall be filed within thirty (30) days of the transmission of the notice by the DRSP pursuant to Article 11(a).
- (c) The Response must be filed with the appropriate DRSP, using a model form made available by that DRSP, with copies to ICANN and the Objector.

- (d) The Response shall contain, inter alia, the following information:
  - (i) The names and contact information (address, telephone number, email address, etc.) of the Applicant; and
  - (ii) A point-by-point response to the statements made in the Objection.
- (e) The substantive portion of the Response shall be limited to 5,000 words or 20 pages, whichever is less, excluding attachments. The Applicant shall also describe and provide copies of any supporting or official documents upon which the Response is based.
- (f) At the same time as the Response is filed, the Applicant shall pay a filing fee in the amount set and published by the relevant DRSP (which shall be the same as the filing fee paid by the Objector) and include evidence of such payment in the Response. In the event that the filing fee is not paid within ten (10) days of the receipt of the Response by the DRSP, the Applicant shall be deemed to be in default, any Response disregarded and the Objection shall be deemed successful.
- (g) If the DRSP finds that the Response does not comply with Articles 11(c) and (d)(1) of this Procedure and the applicable DRSP Rules, the DRSP shall have the discretion to request that any administrative deficiencies in the Response be corrected within five (5) days. If the administrative deficiencies in the Response are cured within the specified period but after the lapse of the time limit for submitting a Response pursuant to this Procedure, the Response shall be deemed to be within this time limit.
- (g) If the Applicant fails to file a Response to the Objection within the 30-day time limit, the Applicant shall be deemed to be in default and the Objection shall be deemed successful. No fees paid by the Applicant will be refunded in case of default.

## **Article 12. Consolidation of Objections**

- (a) The DRSP is encouraged, whenever possible and practicable, and as may be further stipulated in the applicable DRSP Rules, to consolidate Objections, for example, when more than one Objector has filed an Objection to the same gTLD on the same grounds. The DRSP shall endeavor to decide upon consolidation prior to issuing its notice pursuant to Article 11(a) and, where appropriate, shall inform the parties of the consolidation in that notice.
- (b) If the DRSP itself has not decided to consolidate two or more Objections, any Applicant or Objector may propose the consolidation of Objections within seven (7) days of the notice given by the DRSP pursuant to Article 11(a). If, following such a proposal, the DRSP decides to consolidate certain Objections, which decision must be made within 14 days of the notice given by the DRSP pursuant to Article 11(a), the deadline for the Applicant's Response in the consolidated proceeding shall be thirty (30) days from the Applicant's receipt of the DRSP's notice of consolidation.
- (c) In deciding whether to consolidate Objections, the DRSP shall weigh the benefits (in terms of time, cost, consistency of decisions, etc.) that may result from the consolidation against the possible prejudice or inconvenience that the consolidation may cause. The DRSP's determination on consolidation shall be final and not subject to appeal.
- (d) Objections based upon different grounds, as summarized in Article 2(e), shall not be consolidated.

### **Article 13. The Panel**

- (a) The DRSP shall select and appoint the Panel of Expert(s) within thirty (30) days after receiving the Response.
- (b) Number and specific qualifications of Expert(s):
  - (i) There shall be one Expert in proceedings involving a String Confusion Objection.
  - (ii) There shall be one Expert or, if all of the Parties so agree, three Experts with relevant experience in intellectual property rights disputes in proceedings involving an Existing Legal Rights Objection.
  - (iii) There shall be three Experts recognized as eminent jurists of international reputation, one of whom shall be designated as the Chair. The Chair shall be of a nationality different from the nationalities of the Applicant and of the Objector, in proceedings involving a Limited Public Interest Objection.
  - (iv) There shall be one Expert in proceedings involving a Community Objection.
- (c) All Experts acting under this Procedure shall be impartial and independent of the parties. The applicable DRSP Rules stipulate the manner by which each Expert shall confirm and maintain their impartiality and independence.
- (d) The applicable DRSP Rules stipulate the procedures for challenging an Expert and replacing an Expert.
- (e) Unless required by a court of law or authorized in writing by the parties, an Expert shall not act in any capacity whatsoever, in any pending or future proceedings, whether judicial, arbitral or otherwise, relating to the matter referred to expert determination under this Procedure.

### **Article 14. Costs**

- (a) Each DRSP shall determine the costs for the proceedings that it administers under this Procedure in accordance with the applicable DRSP Rules. Such costs shall cover the fees and expenses of the members of the Panel, as well as the administrative fees of the DRSP (the "Costs").
- (b) Within ten (10) days of constituting the Panel, the DRSP shall estimate the total Costs and request the Objector and the Applicant/Respondent each to pay in advance the full amount of the Costs to the DRSP. Each party shall make its advance payment of Costs within ten (10) days of receiving the DRSP's request for payment and submit to the DRSP evidence of such payment. The respective filing fees paid by the Parties shall be credited against the amounts due for this advance payment of Costs.
- (c) The DRSP may revise its estimate of the total Costs and request additional advance payments from the parties during the proceedings.
- (d) Failure to make an advance payment of Costs:
  - (i) If the Objector fails to make the advance payment of Costs, its Objection shall be dismissed and no fees that it has paid shall be refunded.

- (ii) If the Applicant fails to make the advance payment of Costs, the Objection will be deemed to have been sustained and no fees that the Applicant has paid shall be refunded.
- (e) Upon the termination of the proceedings, after the Panel has rendered its Expert Determination, the DRSP shall refund to the prevailing party, as determined by the Panel, its advance payment(s) of Costs.

**Article 15. Representation and Assistance**

- (a) The parties may be represented or assisted by persons of their choice.
- (b) Each party or party representative shall communicate the name, contact information and function of such persons to the DRSP and the other party (or parties in case of consolidation).

**Article 16. Negotiation and Mediation**

- (a) The parties are encouraged, but not required, to participate in negotiations and/or mediation at any time throughout the dispute resolution process aimed at settling their dispute amicably.
- (b) Each DRSP shall be able to propose, if requested by the parties, a person who could assist the parties as mediator.
- (c) A person who acts as mediator for the parties shall not serve as an Expert in a dispute between the parties under this Procedure or any other proceeding under this Procedure involving the same gTLD.
- (d) The conduct of negotiations or mediation shall not, *ipso facto*, be the basis for a suspension of the dispute resolution proceedings or the extension of any deadline under this Procedure. Upon the joint request of the parties, the DRSP or (after it has been constituted) the Panel may grant the extension of a deadline or the suspension of the proceedings. Absent exceptional circumstances, such extension or suspension shall not exceed thirty (30) days and shall not delay the administration of any other Objection.
- (e) If, during negotiations and/or mediation, the parties agree on a settlement of the matter referred to the DRSP under this Procedure, the parties shall inform the DRSP, which shall terminate the proceedings, subject to the parties' payment obligation under this Procedure having been satisfied, and inform ICANN and the parties accordingly.

**Article 17. Additional Written Submissions**

- (a) The Panel may decide whether the parties shall submit any written statements in addition to the Objection and the Response, and it shall fix time limits for such submissions.
- (b) The time limits fixed by the Panel for additional written submissions shall not exceed thirty (30) days, unless the Panel, having consulted the DRSP, determines that exceptional circumstances justify a longer time limit.

## **Article 18. Evidence**

In order to achieve the goal of resolving disputes over new gTLDs rapidly and at reasonable cost, procedures for the production of documents shall be limited. In exceptional cases, the Panel may require a party to provide additional evidence.

## **Article 19. Hearings**

- (a) Disputes under this Procedure and the applicable DRSP Rules will usually be resolved without a hearing.
- (b) The Panel may decide, on its own initiative or at the request of a party, to hold a hearing only in extraordinary circumstances.
- (c) In the event that the Panel decides to hold a hearing:
  - (i) The Panel shall decide how and where the hearing shall be conducted.
  - (ii) In order to expedite the proceedings and minimize costs, the hearing shall be conducted by videoconference if possible.
  - (iii) The hearing shall be limited to one day, unless the Panel decides, in exceptional circumstances, that more than one day is required for the hearing.
  - (iv) The Panel shall decide whether the hearing will be open to the public or conducted in private.

## **Article 20. Standards**

- (a) For each category of Objection identified in Article 2(e), the Panel shall apply the standards that have been defined by ICANN.
- (b) In addition, the Panel may refer to and base its findings upon the statements and documents submitted and any rules or principles that it determines to be applicable.
- (c) The Objector bears the burden of proving that its Objection should be sustained in accordance with the applicable standards.

## **Article 21. The Expert Determination**

- (a) The DRSP and the Panel shall make reasonable efforts to ensure that the Expert Determination is rendered within forty-five (45) days of the constitution of the Panel. In specific circumstances such as consolidated cases and in consultation with the DRSP, if significant additional documentation is requested by the Panel, a brief extension may be allowed.
- (b) The Panel shall submit its Expert Determination in draft form to the DRSP's scrutiny as to form before it is signed, unless such scrutiny is specifically excluded by the applicable DRSP Rules. The modifications proposed by the DRSP to the Panel, if any, shall address only the form of the Expert Determination. The signed Expert Determination shall be communicated to the DRSP, which in turn will communicate that Expert Determination to the Parties and ICANN.
- (c) When the Panel comprises three Experts, the Expert Determination shall be made by a majority of the Experts.

- (d) The Expert Determination shall be in writing, shall identify the prevailing party and shall state the reasons upon which it is based. The remedies available to an Applicant or an Objector pursuant to any proceeding before a Panel shall be limited to the success or dismissal of an Objection and to the refund by the DRSP to the prevailing party, as determined by the Panel in its Expert Determination, of its advance payment(s) of Costs pursuant to Article 14(e) of this Procedure and any relevant provisions of the applicable DRSP Rules.
- (e) The Expert Determination shall state the date when it is made, and it shall be signed by the Expert(s). If any Expert fails to sign the Expert Determination, it shall be accompanied by a statement of the reason for the absence of such signature.
- (f) In addition to providing electronic copies of its Expert Determination, the Panel shall provide a signed hard copy of the Expert Determination to the DRSP, unless the DRSP Rules provide for otherwise.
- (g) Unless the Panel decides otherwise, the Expert Determination shall be published in full on the DRSP's website.

## **Article 22. Exclusion of Liability**

In addition to any exclusion of liability stipulated by the applicable DRSP Rules, neither the Expert(s), nor the DRSP and its employees, nor ICANN and its Board members, employees and consultants shall be liable to any person for any act or omission in connection with any proceeding conducted under this Procedure.

## **Article 23. Modification of the Procedure**

- (a) ICANN may from time to time, in accordance with its Bylaws, modify this Procedure.
- (b) The version of this Procedure that is applicable to a dispute resolution proceeding is the version that was in effect on the day when the relevant application for a new gTLD is submitted.

International Centre for Dispute Resolution (ICDR)  
Fees & Costs Schedule for String Confusion Objections  
(Fee Schedule)

May 20, 2010

Administrative Filing Fees (non-refundable)

- US \$2750 Filing Fee; per party; per objection.  
This amount is due on all objections filed.
- US \$1250<sup>1</sup> Case Service Fee; per party; per objection.  
This additional amount only becomes due if any type of hearing is conducted in accordance with Article 19 of the gTLD Dispute Resolution Procedures.

Neutral Panel Compensation (limited to one arbitrator)

- US \$6000<sup>2</sup> per objector/applicant.  
This is collected for all cases to be heard on documents only and includes all arbitrator expenses.
- US \$3000<sup>3</sup> per party.  
This is billed if any type of hearing is conducted.
  - Same amount billed for each additional day of hearing beyond one day.
  - Includes all travel time of the neutral.
  - Does not include travel expenses which will be billed separately

<sup>1</sup>See Article 19 of the gTLD Dispute Resolution Procedures.

<sup>2</sup>See Article 14(b) of the gTLD Dispute Resolution Procedures.

<sup>3</sup>See Article 14(c) of the gTLD Dispute Resolution Procedures.

International Centre for Dispute Resolution (ICDR)

Supplementary Procedures for String Confusion Objections  
(DRSP Rules)

May 20, 2010

**Impartiality and Independence of Experts**

**Article 1**

1. Arbitrators, who shall be referred to as "Experts", acting under the **gTLD DISPUTE RESOLUTION PROCEDURES** and these Rules shall be impartial and independent. Prior to accepting appointment, a prospective Expert shall disclose to the DRSP any circumstance likely to give rise to justifiable doubts as to the Expert's impartiality or independence. If, at any stage during the proceedings, new circumstances arise that may give rise to such doubts, an Expert shall promptly disclose such circumstances to the parties and to the DRSP. Upon receipt of such information from an Expert or a party, the DRSP shall communicate it to the other parties and to the panel.
2. No party or anyone acting on its behalf shall have any *ex parte* communication relating to the case with any Expert.

**Challenge of Experts**

**Article 2**

1. A party may challenge any Expert whenever circumstances exist that give rise to justifiable doubts as to the Expert's impartiality or independence. A party wishing to challenge an Expert shall send notice of the challenge to the DRSP within 10 days after being notified of the appointment of the Expert or within 10 days after the circumstances giving rise to the challenge become known to that party.
2. The challenge shall state in writing the reasons for the challenge.
3. Upon receipt of such a challenge, the DRSP shall notify the other parties of the challenge. Upon review of the challenge the DRSP in its sole discretion shall make the decision on the challenge and advise the parties of its decision. The challenged arbitrator may also withdraw from office upon notice of the challenge.

## **Replacement of an Expert**

### **Article 3**

If an Expert withdraws after a challenge, or the DRSP sustains the challenge, or the DRSP determines that there are sufficient reasons to accept the resignation of an Expert, or an Expert dies, a substitute Expert shall be appointed pursuant to the provisions of Article 13 of the **gTLD Dispute Resolution Procedures**.

## **Waiver of Rules**

### **Article 4**

A party who knows that any provision of the Rules or requirement under the Rules has not been complied with, but proceeds with the arbitration without promptly stating an objection in writing thereto, shall be deemed to have waived the right to object.

## **Confidentiality**

### **Article 5**

Confidential information disclosed during the proceedings by the parties or by witnesses shall not be divulged by an Expert or by the DRSP.

## **Interpretation of Rules**

### **Article 6**

The tribunal shall interpret and apply these Rules insofar as they relate to its powers and duties.

## **Exclusion of Liability**

### **Article 7**

1. Neither the International Centre for Dispute Resolution (ICDR), the American Arbitration Association (AAA), nor any Expert in a proceeding under the gTLD Dispute Resolution Procedures and/or these Rules is a necessary or proper party in judicial proceedings relating to the Objection proceeding.
2. Parties to an Objection proceeding under the gTLD Dispute Resolution Procedures and/or these Rules shall be deemed to have consented that neither the ICDR, the AAA, nor any Expert shall be liable to any party in any action for damages or injunctive relief for any act or omission in connection with any Objection proceeding under the gTLD Dispute Resolution Procedures and/or these Rules.

DRAFT

[Draft WIPO DRSP Fees, August 7, 2009]

**SCHEDULE OF FEES AND COSTS:  
NEW GTLD PRE-DELEGATION LEGAL RIGHTS OBJECTION PROCEDURE**  
(All amounts are in United States dollars)

*(This Schedule may be amended by the DRSP in accordance with its DRSP Rules.)*

**DRSP Fee<sup>1</sup>**

	DRSP Fee
Single-Expert Panel	2,000
Three-Expert Panel	3,000

**Panel Fee<sup>2</sup>**

*Base Panel Fee for Single Objection to Single Application Dispute*

Single-Expert Panel	8,000
Three-Expert Panel	20,000
[Presiding Expert: 10,000, Co-Expert: 5,000]	

*Panel Fee for Multiple Objections to Single Application:<sup>3</sup>  
60% of Regular Base Fee (to be paid per Objection filed)*

Single-Expert Panel	4,800
Three-Expert Panel	12,000
[Presiding Expert: 6,000, Co-Expert: 3,000]	

*Panel Fee for Multiple Objections filed by Same Objector to Multiple Applications:  
80% of Regular Base Fee (to be paid per Objection filed)<sup>3</sup>*

Single-Expert Panel	6,400
Three-Expert Panel	16,000
[Presiding Expert: 8,000, Co-Expert: 4,000]	

**All Other Scenarios<sup>3</sup>**

In all other scenarios, the DRSP shall determine the applicable fees in consultation with the Panel, taking into account the base fees stipulated above and the circumstances of the consolidated objections and applications.

**Additional Advance Payments**

Depending on the circumstances of the case, additional advance payments may be required to be made. In determining whether additional advance payments shall be required, the DRSP, in consultation with the Panel, may consider the following non-exclusive factors: the number of Applications and/or Objections to the TLD, the number of parties, the complexity of the dispute, the anticipated time required for rendering an Expert Determination, and the possible need for hearings, phone or video conferences, or additional pleading rounds.

<sup>1</sup> See Articles 8(c) and 11(f) of the New gTLD Dispute Resolution Procedure.

<sup>2</sup> See Article 14 of the New gTLD Dispute Resolution Procedure.

<sup>3</sup> See Article 12 of the New gTLD Dispute Resolution Procedure.

*[Draft WIPO Rules for New gTLD Dispute Resolution,  
Version 1 of August \_\_, 2009]*

**World Intellectual Property Organization Rules for New gTLD Dispute Resolution for Existing Legal Rights Objections (“WIPO Rules for New gTLD Dispute Resolution”)**

*(In effect as of [Month Date, Year])*

**1. Scope of WIPO Rules for New gTLD Dispute Resolution in Relation to Procedure**

(a) Set out below are the applicable WIPO Rules for New gTLD Dispute Resolution for Existing Legal Rights Objections as referred to in Article [4] of the New gTLD Dispute Resolution Procedure (“Procedure”) as approved by the Internet Corporation for Assigned Names and Numbers (“ICANN”) on [Month Date, Year]. The WIPO Rules for New gTLD Dispute Resolution are to be read and used in connection with the Procedure which provides the basic framework for the four categories of objections [defined in Article [4] of the Procedure] arising from Applications under ICANN’s New gTLD Program.

(b) The version of the WIPO Rules for New gTLD Dispute Resolution applicable to a proceeding conducted under the Procedure is the version in effect on the day when the relevant Application for a new gTLD is submitted. *[Language to be aligned with ultimate language of Article 23(b) of the Procedure.]*

**2. Definitions**

Terms defined in the Procedure shall have the same meaning in the WIPO Rules for New gTLD Dispute Resolution. Words used in the singular shall include the plural and *vice versa* as the context may require.

**3. Communications**

(a) Subject to Article [6] of the Procedure, except where otherwise agreed beforehand with the WIPO Arbitration and Mediation Center (“Center”), and subject to the discretion of any appointed Panel, any submission to the Center or to the Panel shall be made:

- (i) [By electronic mail (email) using [...@wipo.int]; or
- (ii) In consultation with the Center, and where available, through the WIPO Electronic Case Facility (WIPO ECAF).]

(b) Subject to Article [6(a)] of the Procedure, if a party wishes to submit a hard copy or other non-electronic submission prior to Panel appointment, it shall first request leave to do so from the Center; the Center shall, in its sole discretion, then make a *prima facie* determination whether to accept the non-electronic submission, subject to the ultimate discretion of the Panel on appointment whether to accept the non-electronic submission in accordance with Article [6(a)] of the Procedure.

(c) Absent a request from a party for a hard copy of the Expert Determination, and subject to Article [21(f)] of the Procedure, the Center shall provide the parties and ICANN with an electronic copy of the Expert Determination.

#### **4. Submission of Objection and Response**

(a) In accordance with Articles [7] and [8] of the Procedure, the Objector shall transmit its Objection using the Objection Model Form set out in Annex [A] hereto and posted on the Center's website and shall comply with the Center's Filing Guidelines set out in Annex [B] hereto and posted on the Center's website.

(b) In accordance with Article [11] of the Procedure, the Applicant shall transmit its Response using the Response Model Form set out in Annex [C] hereto and posted on the Center's website and shall comply with the Center's Filing Guidelines set out in Annex [B] hereto and posted on the Center's website.

#### **5. Center Review of Objections**

(a) In accordance with Article [9] of the Procedure if an Objection is dismissed due to the Objector's failure to remedy an administrative deficiency, there shall be no refund of any DRSP Fee paid by the Objector pursuant to Article [14] of the Procedure and Paragraph [10] of the WIPO Rules for New gTLD Dispute Resolution.

(b) If an Objector submits a new Objection within ten (10) calendar days of closure of a proceeding as provided in Article [9(d)] of the Procedure and Paragraph [5(a)] of the WIPO Rules for New gTLD Dispute Resolution to remedy an administratively deficient Objection, such new Objection may be accompanied by a request for a DRSP Fee waiver, in whole or in part, for the Center's consideration in its sole discretion.

#### **6. Appointment of Case Manager**

(a) The Center shall advise the parties of the name and contact details of the Case Manager who shall be responsible for all administrative matters relating to the dispute and communications to the Panel.

(b) The Case Manager may provide administrative assistance to the parties or Panel, but shall have no authority to decide matters of a substantive nature concerning the dispute.

## 7. Consolidation

(a) In accordance with Article [12] of the Procedure, the Center may, where possible and practicable, and in its sole discretion, decide to consolidate Objections by appointing the same Panel to decide multiple Objections sharing certain commonalities. In the event of consolidation, the Panel shall render individual Expert Determinations for each Objection.

(b) A party may submit a consolidation request pursuant to Article [12(b)] of the Procedure, or may oppose any consolidation request submitted. Any such opposition to a consolidation request shall be provided within seven (7) calendar days of the consolidation request. Any consolidation request or opposition thereto shall be limited to 1,500 words in length.

(c) In the case of consolidated Objections, the applicable reduced Panel fees are specified in Annex [D] hereto and posted on the Center's website.

(d) Pursuant to Article [12] of the Procedure, in weighing the that may result from consolidation against the possible prejudice or inconvenience that consolidation may cause, the Center in reaching its decision concerning consolidation, may take into account, *inter alia*, the following non-exclusive factors:

- (i) Whether the Objections concern the same or similar TLD(s);
- (ii) Whether the same Objector files Objections concerning multiple TLD applications;
- (iii) Whether in any consolidation request, or opposition thereto, the Objector or Applicant relies on single or multiple mark(s);
- (iv) The scope of evidence relied on by an Objector or Applicant in any Objection or application;
- (v) Any other arguments raised in any consolidation request, or opposition thereto;
- (vi) Expert availability to accept appointment.

(e) The Center's decision on any consolidation of multiple Objections for Expert Determination by the same Panel is of an administrative nature and shall be final. The Center shall not be required to state reasons for its decision.

## 8. Panel Appointment Procedures

- (a) The Center will maintain and publish on its website a publicly-available List of Experts.
- (b) Pursuant to Article [13(b)(ii)] of the Procedure, there shall be a Single-Expert Panel unless all the Parties agree to the appointment of a Three-Expert Panel.
- (c) In the event of a Single-Expert Panel, the Center shall in its sole discretion appoint an Expert from its List of Experts.
- (d) In the event all the Parties agree to the appointment of a Three-Expert Panel, any such agreement shall be communicated to the Center within five (5) calendar days of the Center's receipt of the Response filed in accordance with Article [11] of the Procedure and Paragraph [4(b)] of the WIPO Rules for New gTLD Dispute Resolution.
- (i) If Objections are not consolidated, and if the parties have communicated their agreement on the appointment of a Three-Expert Panel, within five (5) calendar days of such communication each party shall separately submit to the Center (notwithstanding Article [6(b)] of the Procedure) the names of three (3) candidates from the Center's List of Experts, in the order of their respective preference, for appointment by the Center as a Co-Expert. In the event none of a party's three (3) candidates is available for appointment as a Co-Expert, the Center shall appoint the Co-Expert in its sole discretion.
  - (ii) In the event of consolidation in accordance with Paragraph [7] of the WIPO Rules for New gTLD Dispute Resolution, the Objectors or Applicants shall, as the case may be, jointly submit the names of the three (3) candidates from the Center's List of Experts in order of preference (i.e., one list on behalf of all Objector(s) and one list on behalf of all Applicant(s)). If the Objectors or Applicants as the case may be do not jointly agree on and submit the names of three (3) candidates within five (5) calendar days of the parties' communication to the Center on their agreement to the appointment of a Three-Expert Panel, the Center shall in its sole discretion appoint the Co-Experts.
  - (iii) The third Expert, who shall be the Presiding Expert, shall absent exceptional circumstances be appointed by the Center from a list of five (5) candidates submitted by the Center to the parties. The Center's selection of a Presiding Expert shall be made in a manner that seeks to reasonably balance the preferences of each party as communicated to the Center within five (5) calendar days of the Center's communication of the list of candidates to the parties.

- (iv) Where any party fails to indicate its order of preference for the Presiding Expert to the Center, the Center shall nevertheless proceed to appoint the Presiding Expert in its sole discretion, taking into account any preferences of any other party.

## **9. Expert Impartiality and Independence**

(a) In accordance with Article [13(c)] of the Procedure, any prospective Expert shall, before accepting appointment, disclose to the Center and parties any circumstance that might give rise to justifiable doubt as to the Expert's impartiality or independence, or confirm in writing that no such circumstance exist by submitting to the Center a *Declaration of Impartiality and Independence* using the form set out in Annex [E] hereto and posted on the Center's website.

(b) If at any stage during a proceeding conducted under the Procedure, circumstances arise that might give rise to justifiable doubt as to an Expert's impartiality or independence, the Expert shall promptly disclose such circumstances to the parties and the Center.

(c) A party may challenge an Expert if circumstances exist which give rise to justifiable doubt as to the Expert's impartiality or independence. A party may challenge an Expert whom it has appointed or in whose appointment it concurred, only for reasons of which it becomes aware after the appointment has been made.

- (i) A party challenging an Expert shall send notice to the Center and the other party, stating the reasons for the challenge, within five (5) calendar days after being notified of that Expert's appointment or becoming aware of circumstances that it considers give rise to justifiable doubt as to that Expert's impartiality or independence.
- (ii) The decision on the challenge shall be made by the Center in its sole discretion. Such a decision is of an administrative nature and shall be final. The Center shall not be required to state reasons for its decision. In the event of an Expert's removal, the Center shall appoint a new Expert in accordance with the Procedure and these WIPO Rules for New gTLD Dispute Resolution.

## **10. Fees**

(a) The applicable fees for the Procedure for Existing Legal Rights Objections are specified in Annex [D] hereto and posted on the Center's website.

(b) After the Expert Determination has been rendered or a proceeding conducted under the Procedure has been terminated, the Center shall provide an accounting to the parties

of the payments received and, in consultation with any Panel, return any unexpended balance of the Panel Fee to the parties.

## 11. Confidentiality

(a) A party invoking the confidentiality of any information it wishes or is required to submit in any Existing Legal Rights Objection proceeding conducted under the Procedure, shall submit the request for confidentiality to the Center for the Panel's consideration, stating the reasons for which it considers the information to be confidential. If the Panel decides that the information is to be treated as confidential, it shall decide under which conditions and to whom the confidential information may in part or in whole be disclosed and shall require any person to whom the confidential information is to be disclosed to sign an appropriate confidentiality undertaking.

(b) Further to Article [6(b)] of the Procedure, except in exceptional circumstances as decided by the Panel and in consultation with the parties and the Center, no party or anyone acting on its behalf shall have any *ex parte* communication with the Panel.

## 12. Mediation

Further to Article [16] of the Procedure, prior to the Panel rendering its Expert Determination in a proceeding conducted under the Procedure, the parties may inform the Center that they wish to participate in mediation to attempt to resolve the dispute and may request the Center to administer the mediation. In such event, unless both parties agree otherwise, the [WIPO Mediation Rules](#) shall apply *mutatis mutandis*. On request from the parties, and absent exceptional circumstances, the Center's mediation administration fee shall be waived.

## 13. Effect of Court Proceedings

(a) The Objector and Applicant shall include in any Objection or Response relevant information regarding any other legal proceedings concerning the TLD. In the event that a party initiates any legal proceedings during the pendency of a proceeding conducted under the Procedure, it shall promptly notify the Center.

(b) In the event of any legal proceedings initiated prior to or during a proceeding conducted under the Procedure, the Panel shall have the discretion to decide whether to suspend or terminate such proceeding under the Procedure, or to proceed to an Expert Determination.

## 14. Termination

(a) If, before the Panel renders an Expert Determination, it becomes unnecessary or impossible to continue a proceeding conducted under the Procedure for any reason, the Panel may in its discretion terminate the proceeding.

(b) If, prior to Panel appointment, it becomes unnecessary or impossible to continue a proceeding conducted under the Procedure for any reason, the Center in consultation with the parties and ICANN, may in its discretion terminate the proceeding.

## **15. Amendments**

Subject to the Procedure, the Center may amend these WIPO Rules for New gTLD Dispute Resolution in its sole discretion.

## **16. Exclusion of Liability**

Except in respect of deliberate wrongdoing, an Expert, the World Intellectual Property Organization, and the Center shall not be liable to any party or ICANN for any act or omission in connection with any proceeding conducted under the Procedure and the WIPO Rules for New gTLD Dispute Resolution.



# Applicant Guidebook

(30 May 2011)

## Module 4

Potential applicants should be aware that this version of the Guidebook is for consideration and not yet approved. The proposed details of the New gTLD Program remain subject to further consultation and revision.

30 May 2011

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# Module 4

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## *String Contention Procedures*

This module describes situations in which contention over applied-for gTLD strings occurs, and the methods available to applicants for resolving such contention cases.

### *4.1 String Contention*

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String contention occurs when either:

1. Two or more applicants for an identical gTLD string successfully complete all previous stages of the evaluation and dispute resolution processes; or
2. Two or more applicants for similar gTLD strings successfully complete all previous stages of the evaluation and dispute resolution processes, and the similarity of the strings is identified as creating a probability of user confusion if more than one of the strings is delegated.

ICANN will not approve applications for proposed gTLD strings that are identical or that would result in user confusion, called contending strings. If either situation above occurs, such applications will proceed to contention resolution through either community priority evaluation, in certain cases, or through an auction. Both processes are described in this module. A group of applications for contending strings is referred to as a contention set.

(In this Applicant Guidebook, “similar” means strings so similar that they create a probability of user confusion if more than one of the strings is delegated into the root zone.)

#### *4.1.1 Identification of Contention Sets*

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Contention sets are groups of applications containing identical or similar applied-for gTLD strings. Contention sets are identified during Initial Evaluation, following review of all applied-for gTLD strings. ICANN will publish preliminary contention sets once the String Similarity review is completed, and will update the contention sets as necessary during the evaluation and dispute resolution stages.

Applications for identical gTLD strings will be automatically assigned to a contention set. For example, if Applicant A and Applicant B both apply for .TLDSTRING, they will be identified as being in a contention set. Such testing for identical strings also takes into consideration the code point variants listed in any relevant IDN table. That is, two or more applicants whose applied-for strings or designated variants are variant strings according to an IDN table submitted to ICANN would be considered in direct contention with one another. For example, if one applicant applies for string A and another applies for string B, and strings A and B are variant TLD strings as defined in Module 1, then the two applications are in direct contention.

The String Similarity Panel will also review the entire pool of applied-for strings to determine whether the strings proposed in any two or more applications are so similar that they would create a probability of user confusion if allowed to coexist in the DNS. The panel will make such a determination for each pair of applied-for gTLD strings. The outcome of the String Similarity review described in Module 2 is the identification of contention sets among applications that have direct or indirect contention relationships with one another.

Two strings are in **direct contention** if they are identical or similar to one another. More than two applicants might be represented in a direct contention situation: if four different applicants applied for the same gTLD string, they would all be in direct contention with one another.

Two strings are in **indirect contention** if they are both in direct contention with a third string, but not with one another. The example that follows explains direct and indirect contention in greater detail.

In Figure 4-1, Strings A and B are an example of direct contention. Strings C and G are an example of indirect contention. C and G both contend with B, but not with one another. The figure as a whole is one contention set. A contention set consists of all applications that are linked by string contention to one another, directly or indirectly.

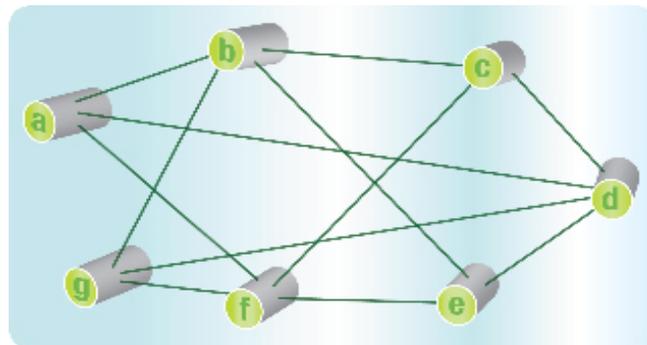


Figure 4-1 – This diagram represents one contention set, featuring both directly and indirectly contending strings.

While preliminary contention sets are determined during Initial Evaluation, the final configuration of the contention sets can only be established once the evaluation and dispute resolution process stages have concluded. This is because any application excluded through those processes might modify a contention set identified earlier.

A contention set may be augmented, split into two sets, or eliminated altogether as a result of an Extended Evaluation or dispute resolution proceeding. The composition of a contention set may also be modified as some applications may be voluntarily withdrawn throughout the process.

Refer to Figure 4-2: In contention set 1, applications D and G are eliminated. Application A is the only remaining application, so there is no contention left to resolve.

In contention set 2, all applications successfully complete Extended Evaluation and Dispute Resolution, so the original contention set remains to be resolved.

In contention set 3, application F is eliminated. Since application F was in direct contention with E and J, but E and J are not in contention with one other, the original contention set splits into two sets: one containing E and K in direct contention, and one containing I and J.

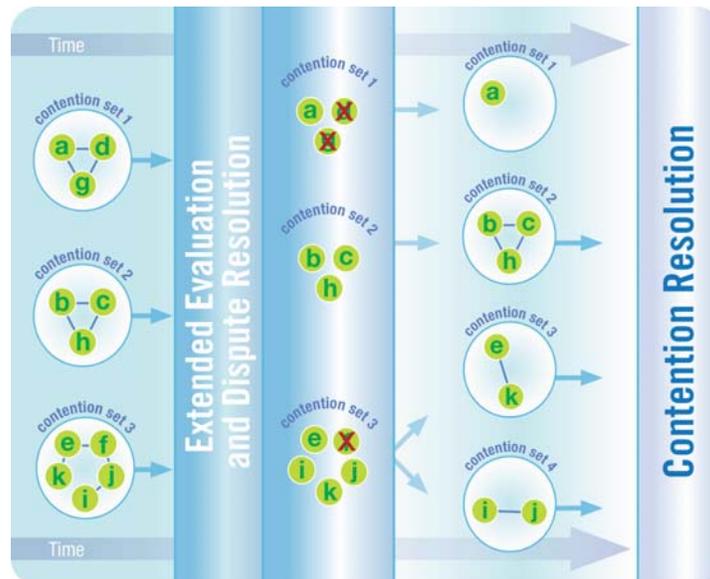


Figure 4-2 – Resolution of string contention cannot begin until all applicants within a contention set have completed all applicable previous stages.

The remaining contention cases must then be resolved through community priority evaluation or by other means, depending on the circumstances. In the string contention resolution stage, ICANN addresses each contention set to achieve an unambiguous resolution.

As described elsewhere in this guidebook, cases of contention might be resolved by community priority evaluation or an agreement among the parties. Absent that, the last-resort contention resolution mechanism will be an auction.

#### 4.1.2 *Impact of String Confusion Dispute Resolution Proceedings on Contention Sets*

If an applicant files a string confusion objection against another application (refer to Module 3), and the panel finds that user confusion is probable (that is, finds in favor of the objector), the two applications will be placed in direct contention with each other. Thus, the outcome of a dispute resolution proceeding based on a string confusion objection would be a new contention set structure for the relevant applications, augmenting the original contention set.

If an applicant files a string confusion objection against another application, and the panel finds that string confusion does not exist (that is, finds in favor of the responding applicant), the two applications will not be considered in direct contention with one another.

A dispute resolution outcome in the case of a string confusion objection filed by another applicant will not result in removal of an application from a previously established contention set.

#### *4.1.3 Self-Resolution of String Contention*

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Applicants that are identified as being in contention are encouraged to reach a settlement or agreement among themselves that resolves the contention. This may occur at any stage of the process, once ICANN publicly posts the applications received and the preliminary contention sets on its website.

Applicants may resolve string contention in a manner whereby one or more applicants withdraw their applications. An applicant may not resolve string contention by selecting a new string or by replacing itself with a joint venture. It is understood that applicants may seek to establish joint ventures in their efforts to resolve string contention. However, material changes in applications (for example, combinations of applicants to resolve contention) will require re-evaluation. This might require additional fees or evaluation in a subsequent application round. Applicants are encouraged to resolve contention by combining in a way that does not materially affect the remaining application. Accordingly, new joint ventures must take place in a manner that does not materially change the application, to avoid being subject to re-evaluation.

#### *4.1.4 Possible Contention Resolution Outcomes*

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An application that has successfully completed all previous stages and is no longer part of a contention set due to changes in the composition of the contention set (as described in subsection 4.1.1) or self-resolution by applicants in the contention set (as described in subsection 4.1.3) may proceed to the next stage.

An application that prevails in a contention resolution procedure, either community priority evaluation or auction, may proceed to the next stage.

In some cases, an applicant who is not the outright winner of a string contention resolution process can still proceed. This situation is explained in the following paragraphs.

If the strings within a given contention set are all identical, the applications are in direct contention with each other and there can only be one winner that proceeds to the next step.

However, where there are both direct and indirect contention situations within a set, more than one string may survive the resolution.

For example, consider a case where string A is in contention with B, and B is in contention with C, but C is not in contention with A. If A wins the contention resolution procedure, B is eliminated but C can proceed since C is not in direct contention with the winner and both strings can coexist in the DNS without risk for confusion.

## ***4.2 Community Priority Evaluation***

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Community priority evaluation will only occur if a community-based applicant selects this option. Community priority evaluation can begin once all applications in the contention set have completed all previous stages of the process.

The community priority evaluation is an independent analysis. Scores received in the applicant reviews are not carried forward to the community priority evaluation. Each application participating in the community priority evaluation begins with a score of zero.

### ***4.2.1 Eligibility for Community Priority Evaluation***

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As described in subsection 1.2.3 of Module 1, all applicants are required to identify whether their application type is:

- Community-based; or
- Standard.

Applicants designating their applications as community-based are also asked to respond to a set of questions in the application form to provide relevant information if a community priority evaluation occurs.

Only community-based applicants are eligible to participate in a community priority evaluation.

At the start of the contention resolution stage, all community-based applicants within remaining contention sets will be notified of the opportunity to opt for a community priority evaluation via submission of a deposit by a specified date. Only those applications for which a deposit has been received by the deadline will be scored in the community priority evaluation. Following the evaluation, the deposit will be refunded to applicants that score 14 or higher.

Before the community priority evaluation begins, the applicants who have elected to participate may be asked to provide additional information relevant to the community priority evaluation.

#### ***4.2.2 Community Priority Evaluation Procedure***

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Community priority evaluations for each eligible contention set will be performed by a community priority panel appointed by ICANN to review these applications. The panel's role is to determine whether any of the community-based applications fulfills the community priority criteria. Standard applicants within the contention set, if any, will not participate in the community priority evaluation.

If a single community-based application is found to meet the community priority criteria (see subsection 4.2.3 below), that applicant will be declared to prevail in the community priority evaluation and may proceed. If more than one community-based application is found to meet the criteria, the remaining contention between them will be resolved as follows:

- In the case where the applications are in indirect contention with one another (see subsection 4.1.1), they will both be allowed to proceed to the next stage. In this case, applications that are in direct contention with any of these community-based applications will be eliminated.
- In the case where the applications are in direct contention with one another, these applicants will proceed to an auction. If all parties agree and present a joint request, ICANN may postpone the auction for a three-month period while the parties attempt to reach a settlement before proceeding to auction. This is a one-time option; ICANN will grant no more than one such request for each set of contending applications.

If none of the community-based applications are found to meet the criteria, then all of the parties in the contention set (both standard and community-based applicants) will proceed to an auction.

Results of each community priority evaluation will be posted when completed.

Applicants who are eliminated as a result of a community priority evaluation are eligible for a partial refund of the gTLD evaluation fee (see Module 1).

### ***4.2.3 Community Priority Evaluation Criteria***

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The Community Priority Panel will review and score the one or more community-based applications having elected the community priority evaluation against four criteria as listed below.

The scoring process is conceived to identify qualified community-based applications, while preventing both “false positives” (awarding undue priority to an application that refers to a “community” construed merely to get a sought-after generic word as a gTLD string) and “false negatives” (not awarding priority to a qualified community application). This calls for a holistic approach, taking multiple criteria into account, as reflected in the process. The scoring will be performed by a panel and be based on information provided in the application plus other relevant information available (such as public information regarding the community represented). The panel may also perform independent research, if deemed necessary to reach informed scoring decisions.

It should be noted that a qualified community application eliminates all directly contending standard applications, regardless of how well qualified the latter may be. This is a fundamental reason for very stringent requirements for qualification of a community-based application, as embodied in the criteria below. Accordingly, a finding by the panel that an application does not meet the scoring threshold to prevail in a community priority evaluation is not necessarily an indication the community itself is in some way inadequate or invalid.

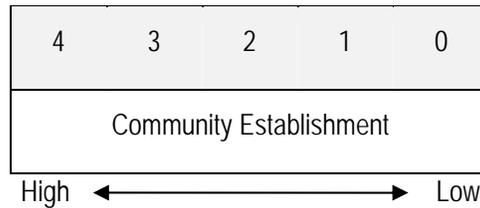
The sequence of the criteria reflects the order in which they will be assessed by the panel. The utmost care has been taken to avoid any “double-counting” - any negative aspect found in assessing an application for one criterion

should only be counted there and should not affect the assessment for other criteria.

An application must score at least 14 points to prevail in a community priority evaluation. The outcome will be determined according to the procedure described in subsection 4.2.2.

**Criterion #1: Community Establishment (0-4 points)**

A maximum of 4 points is possible on the Community Establishment criterion:



As measured by:

A. Delineation (2)

2	1	0
Clearly delineated, organized, and pre-existing community.	Clearly delineated and pre-existing community, but not fulfilling the requirements for a score of 2.	Insufficient delineation and pre-existence for a score of 1.

B. Extension (2)

2	1	0
Community of considerable size and longevity.	Community of either considerable size or longevity, but not fulfilling the requirements for a score of 2.	Community of neither considerable size nor longevity.

This section relates to the community as explicitly identified and defined according to statements in the application.

(The implicit reach of the applied-for string is not considered here, but taken into account when scoring Criterion #2, "Nexus between Proposed String and Community.")

**Criterion 1 Definitions**

- "Community" - Usage of the expression "community" has evolved considerably from its Latin origin – "communitas" meaning "fellowship" – while still implying more of cohesion than a mere commonality of interest. Notably, as "community" is used throughout the application, there should be: (a) an awareness and recognition of a community among its members; (b) some understanding of the community's existence prior to September 2007 (when the new gTLD policy recommendations were completed); and (c) extended tenure or longevity—non-transience—into the future.
- "Delineation" relates to the membership of a community, where a clear and straight-forward membership definition scores high, while an unclear, dispersed or unbound definition scores low.
- "Pre-existing" means that a community has been active as such since before the new gTLD policy recommendations were completed in September 2007.
- "Organized" implies that there is at least one entity mainly dedicated to the community, with documented evidence of community activities.
- "Extension" relates to the dimensions of the community, regarding its number of members, geographical reach, and foreseeable activity lifetime, as further explained in the following.
- "Size" relates both to the number of members and the geographical reach of the community, and will be scored depending on the context rather than on absolute numbers - a geographic location community may count millions of members in a limited location, a language community may have a million members with some spread over the globe, a community of service providers may have "only" some hundred members although well spread over the globe, just to mention some

examples - all these can be regarded as of "considerable size."

- "Longevity" means that the pursuits of a community are of a lasting, non-transient nature.

**Criterion 1 Guidelines**

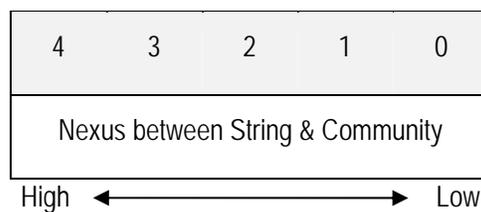
With respect to "Delineation" and "Extension," it should be noted that a community can consist of legal entities (for example, an association of suppliers of a particular service), of individuals (for example, a language community) or of a logical alliance of communities (for example, an international federation of national communities of a similar nature). All are viable as such, provided the requisite awareness and recognition of the community is at hand among the members. Otherwise the application would be seen as not relating to a real community and score 0 on both "Delineation" and "Extension."

With respect to "Delineation," if an application satisfactorily demonstrates all three relevant parameters (delineation, pre-existing and organized), then it scores a 2.

With respect to "Extension," if an application satisfactorily demonstrates both community size and longevity, it scores a 2.

**Criterion #2: Nexus between Proposed String and Community (0-4 points)**

A maximum of 4 points is possible on the Nexus criterion:



As measured by:

A. Nexus (3)

<b>3</b>	<b>2</b>	<b>0</b>
The string matches the name of the community or	String identifies the community, but does not qualify for a	String nexus does not fulfill the requirements for

3	2	0
is a well known short-form or abbreviation of the community name.	score of 3.	a score of 2.

B. Uniqueness (1)

1	0
String has no other significant meaning beyond identifying the community described in the application.	String does not fulfill the requirement for a score of 1.

This section evaluates the relevance of the string to the specific community that it claims to represent.

**Criterion 2 Definitions**

- "Name" of the community means the established name by which the community is commonly known by others. It may be, but does not need to be, the name of an organization dedicated to the community.
- "Identify" means that the applied for string closely describes the community or the community members, without over-reaching substantially beyond the community.

**Criterion 2 Guidelines**

With respect to "Nexus," for a score of 3, the essential aspect is that the applied-for string is commonly known by others as the identification / name of the community.

With respect to "Nexus," for a score of 2, the applied-for string should closely describe the community or the community members, without over-reaching substantially beyond the community. As an example, a string could qualify for a score of 2 if it is a noun that the typical community member would naturally be called in the context. If the string appears excessively broad (such as, for

example, a globally well-known but local tennis club applying for “.TENNIS”) then it would not qualify for a 2.

With respect to “Uniqueness,” “significant meaning” relates to the public in general, with consideration of the community language context added.

“Uniqueness” will be scored both with regard to the community context and from a general point of view. For example, a string for a particular geographic location community may seem unique from a general perspective, but would not score a 1 for uniqueness if it carries another significant meaning in the common language used in the relevant community location. The phrasing “...beyond identifying the community” in the score of 1 for “uniqueness” implies a requirement that the string does identify the community, i.e. scores 2 or 3 for “Nexus,” in order to be eligible for a score of 1 for “Uniqueness.”

It should be noted that “Uniqueness” is only about the *meaning* of the string - since the evaluation takes place to resolve contention there will obviously be other applications, community-based and/or standard, with identical or confusingly similar strings in the contention set to resolve, so the string will clearly not be “unique” in the sense of “alone.”

**Criterion #3: Registration Policies (0-4 points)**

A maximum of 4 points is possible on the Registration Policies criterion:



As measured by:

A. Eligibility (1)

1	0
Eligibility restricted to community members.	Largely unrestricted approach to eligibility.

B. Name selection (1)

1	0
Policies include name selection rules consistent with the articulated community-based purpose of the applied-for gTLD.	Policies do not fulfill the requirements for a score of 1.

C. Content and use (1)

1	0
Policies include rules for content and use consistent with the articulated community-based purpose of the applied-for gTLD.	Policies do not fulfill the requirements for a score of 1.

D. Enforcement (1)

1	0
Policies include specific enforcement measures (e.g. investigation practices, penalties, takedown procedures) constituting a coherent set with appropriate appeal mechanisms.	Policies do not fulfill the requirements for a score of 1.

This section evaluates the applicant's registration policies as indicated in the application. Registration policies are the conditions that the future registry will set for prospective

registrants, i.e. those desiring to register second-level domain names under the registry.

**Criterion 3 Definitions**

- "Eligibility" means the qualifications that entities or individuals must have in order to be allowed as registrants by the registry.
- "Name selection" means the conditions that must be fulfilled for any second-level domain name to be deemed acceptable by the registry.
- "Content and use" means the restrictions stipulated by the registry as to the content provided in and the use of any second-level domain name in the registry.
- "Enforcement" means the tools and provisions set out by the registry to prevent and remedy any breaches of the conditions by registrants.

**Criterion 3 Guidelines**

With respect to "Eligibility," the limitation to community "members" can invoke a formal membership but can also be satisfied in other ways, depending on the structure and orientation of the community at hand. For example, for a geographic location community TLD, a limitation to members of the community can be achieved by requiring that the registrant's physical address is within the boundaries of the location.

With respect to "Name selection," "Content and use," and "Enforcement," scoring of applications against these sub-criteria will be done from a holistic perspective, with due regard for the particularities of the community explicitly addressed. For example, an application proposing a TLD for a language community may feature strict rules imposing this language for name selection as well as for content and use, scoring 1 on both B and C above. It could nevertheless include forbearance in the enforcement measures for tutorial sites assisting those wishing to learn the language and still score 1 on D. More restrictions do not automatically result in a higher score. The restrictions and corresponding enforcement mechanisms proposed by the applicant should show an alignment with the community-based purpose of the TLD and

demonstrate continuing accountability to the community named in the application.

**Criterion #4: Community Endorsement (0-4 points)**

4	3	2	1	0
Community Endorsement				
High ←		→ Low		

As measured by:

A. Support (2)

2	1	0
Applicant is, or has documented support from, the recognized community institution(s)/ member organization(s) or has otherwise documented authority to represent the community.	Documented support from at least one group with relevance, but insufficient support for a score of 2.	Insufficient proof of support for a score of 1.

B. Opposition (2)

2	1	0
No opposition of relevance.	Relevant opposition from one group of non-negligible size.	Relevant opposition from two or more groups of non-negligible size.

This section evaluates community support and/or opposition to the application. Support and opposition will be scored in relation to the communities explicitly addressed as stated in the application, with due regard for the communities implicitly addressed by the string.

**Criterion 4 Definitions**

- "Recognized" means the institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by the community members as representative of the community.
- "Relevance" and "relevant" refer to the communities explicitly and implicitly addressed. This means that opposition from communities not identified in the application but with an association to the applied-for string would be considered relevant.

**Criterion 4 Guidelines**

With respect to "Support," it follows that documented support from, for example, the only national association relevant to a particular community on a national level would score a 2 if the string is clearly oriented to that national level, but only a 1 if the string implicitly addresses similar communities in other nations.

Also with respect to "Support," the plurals in brackets for a score of 2, relate to cases of multiple institutions/organizations. In such cases there must be documented support from institutions/organizations representing a majority of the overall community addressed in order to score 2.

The applicant will score a 1 for "Support" if it does not have support from the majority of the recognized community institutions/member organizations, or does not provide full documentation that it has authority to represent the community with its application. A 0 will be scored on "Support" if the applicant fails to provide documentation showing support from recognized community institutions/community member organizations, or does not provide documentation showing that it has the authority to represent the community. It should be noted, however, that documented support from groups or communities that may be seen as implicitly addressed but have completely different orientations compared to the applicant community will not be required for a score of 2 regarding support.

To be taken into account as relevant support, such documentation must contain a description of the process and rationale used in arriving at the expression of support.

Consideration of support is not based merely on the number of comments or expressions of support received.

When scoring "Opposition," previous objections to the application as well as public comments during the same application round will be taken into account and assessed in this context. There will be no presumption that such objections or comments would prevent a score of 2 or lead to any particular score for "Opposition." To be taken into account as relevant opposition, such objections or comments must be of a reasoned nature. Sources of opposition that are clearly spurious, unsubstantiated, made for a purpose incompatible with competition objectives, or filed for the purpose of obstruction will not be considered relevant.

### ***4.3 Auction: Mechanism of Last Resort***

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It is expected that most cases of contention will be resolved by the community priority evaluation, or through voluntary agreement among the involved applicants. Auction is a tie-breaker method for resolving string contention among the applications within a contention set, if the contention has not been resolved by other means.

An auction will not take place to resolve contention in the case where the contending applications are for geographic names (as defined in Module 2). In this case, the applications will be suspended pending resolution by the applicants.

An auction will take place, where contention has not already been resolved, in the case where an application for a geographic name is in a contention set with applications for similar strings that have not been identified as geographic names.

In practice, ICANN expects that most contention cases will be resolved through other means before reaching the auction stage. However, there is a possibility that significant funding will accrue to ICANN as a result of one or more auctions.<sup>1</sup>

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<sup>1</sup> The purpose of an auction is to resolve contention in a clear, objective manner. It is planned that costs of the new gTLD program will offset by fees, so any funds coming from a last resort contention resolution mechanism such as auctions would result (after paying for the auction process) in additional funding. Any proceeds from auctions will be reserved and earmarked until the uses of

### 4.3.1 Auction Procedures

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An auction of two or more applications within a contention set is conducted as follows. The auctioneer successively increases the prices associated with applications within the contention set, and the respective applicants indicate their willingness to pay these prices. As the prices rise, applicants will successively choose to exit from the auction. When a sufficient number of applications have been eliminated so that no direct contentions remain (i.e., the remaining applications are no longer in contention with one another and all the relevant strings can be delegated as TLDs), the auction will be deemed to conclude. At the auction's conclusion, the applicants with remaining applications will pay the resulting prices and proceed toward delegation. This procedure is referred to as an "ascending-clock auction."

This section provides applicants an informal introduction to the practicalities of participation in an ascending-clock auction. It is intended only as a general introduction and is only preliminary. The detailed set of Auction Rules will be available prior to the commencement of any auction proceedings. If any conflict arises between this module and the auction rules, the auction rules will prevail.

For simplicity, this section will describe the situation where a contention set consists of two or more applications for identical strings.

All auctions will be conducted over the Internet, with participants placing their bids remotely using a web-based

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funds are determined. Funds must be used in a manner that supports directly ICANN's Mission and Core Values and also allows ICANN to maintain its not for profit status.

Possible uses of auction funds include formation of a foundation with a clear mission and a transparent way to allocate funds to projects that are of interest to the greater Internet community, such as grants to support new gTLD applications or registry operators from communities in subsequent gTLD rounds, the creation of an ICANN-administered/community-based fund for specific projects for the benefit of the Internet community, the creation of a registry continuity fund for the protection of registrants (ensuring that funds would be in place to support the operation of a gTLD registry until a successor could be found), or establishment of a security fund to expand use of secure protocols, conduct research, and support standards development organizations in accordance with ICANN's security and stability mission.

The amount of funding resulting from auctions, if any, will not be known until all relevant applications have completed this step. Thus, a detailed mechanism for allocation of these funds is not being created at present. However, a process can be pre-established to enable community consultation in the event that such funds are collected. This process will include, at a minimum, publication of data on any funds collected, and public comment on any proposed models.

software system designed especially for auction. The auction software system will be compatible with current versions of most prevalent browsers, and will not require the local installation of any additional software.

Auction participants (“bidders”) will receive instructions for access to the online auction site. Access to the site will be password-protected and bids will be encrypted through SSL. If a bidder temporarily loses connection to the Internet, that bidder may be permitted to submit its bids in a given auction round by fax, according to procedures described in the auction rules. The auctions will generally be conducted to conclude quickly, ideally in a single day.

The auction will be carried out in a series of auction rounds, as illustrated in Figure 4-3. The sequence of events is as follows:

1. For each auction round, the auctioneer will announce in advance: (1) the start-of-round price, (2) the end-of-round price, and (3) the starting and ending times of the auction round. In the first auction round, the start-of-round price for all bidders in the auction will be USD 0. In later auction rounds, the start-of-round price will be its end-of-round price from the previous auction round.

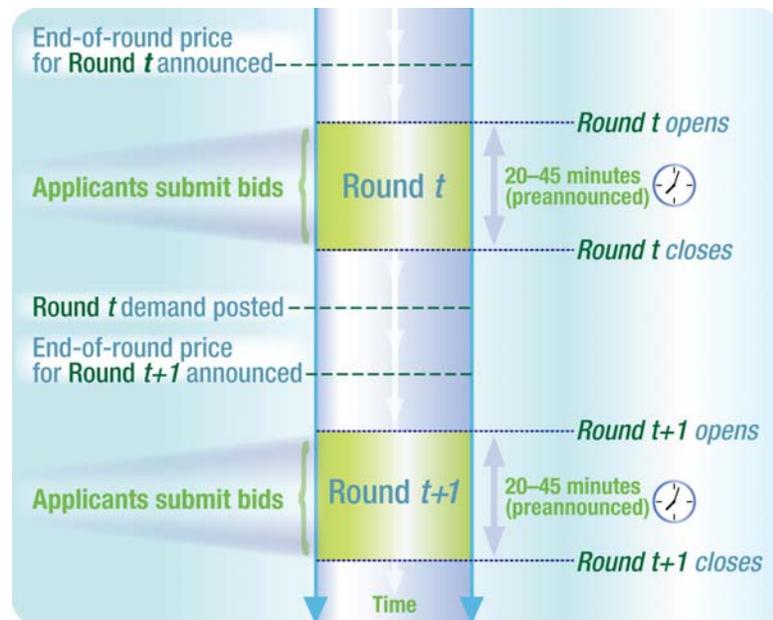


Figure 4-3 – Sequence of events during an ascending-clock auction.

2. During each auction round, bidders will be required to submit a bid or bids representing their willingness to pay within the range of intermediate prices between the start-of-round and end-of-round prices. In this way a bidder indicates its willingness to stay in the auction at all prices through and including the end-of-auction round price, or its wish to exit the auction at a price less than the end-of-auction round price, called the exit bid.
3. Exit is irrevocable. If a bidder exited the auction in a previous auction round, the bidder is not permitted to re-enter in the current auction round.
4. Bidders may submit their bid or bids at any time during the auction round.
5. Only bids that comply with all aspects of the auction rules will be considered valid. If more than one valid bid is submitted by a given bidder within the time limit of the auction round, the auctioneer will treat the last valid submitted bid as the actual bid.
6. At the end of each auction round, bids become the bidders' legally-binding offers to secure the relevant gTLD strings at prices up to the respective bid amounts, subject to closure of the auction in accordance with the auction rules. In later auction rounds, bids may be used to exit from the auction at subsequent higher prices.
7. After each auction round, the auctioneer will disclose the aggregate number of bidders remaining in the auction at the end-of-round prices for the auction round, and will announce the prices and times for the next auction round.
  - Each bid should consist of a single price associated with the application, and such price must be greater than or equal to the start-of-round price.
  - If the bid amount is strictly less than the end-of-round price, then the bid is treated as an exit bid at the specified amount, and it signifies the bidder's binding commitment to pay up to the bid amount if its application is approved.
  - If the bid amount is greater than or equal to the end-of-round price, then the bid signifies that the

bidder wishes to remain in the auction at all prices in the current auction round, and it signifies the bidder's binding commitment to pay up to the end-of-round price if its application is approved. Following such bid, the application cannot be eliminated within the current auction round.

- To the extent that the bid amount exceeds the end-of-round price, then the bid is also treated as a proxy bid to be carried forward to the next auction round. The bidder will be permitted to change the proxy bid amount in the next auction round, and the amount of the proxy bid will not constrain the bidder's ability to submit any valid bid amount in the next auction round.
  - No bidder is permitted to submit a bid for any application for which an exit bid was received in a prior auction round. That is, once an application has exited the auction, it may not return.
  - If no valid bid is submitted within a given auction round for an application that remains in the auction, then the bid amount is taken to be the amount of the proxy bid, if any, carried forward from the previous auction round or, if none, the bid is taken to be an exit bid at the start-of-round price for the current auction round.
8. This process continues, with the auctioneer increasing the price range for each given TLD string in each auction round, until there is one remaining bidder at the end-of-round price. After an auction round in which this condition is satisfied, the auction concludes and the auctioneer determines the clearing price. The last remaining application is deemed the successful application, and the associated bidder is obligated to pay the clearing price.

Figure 4-4 illustrates how an auction for five contending applications might progress.

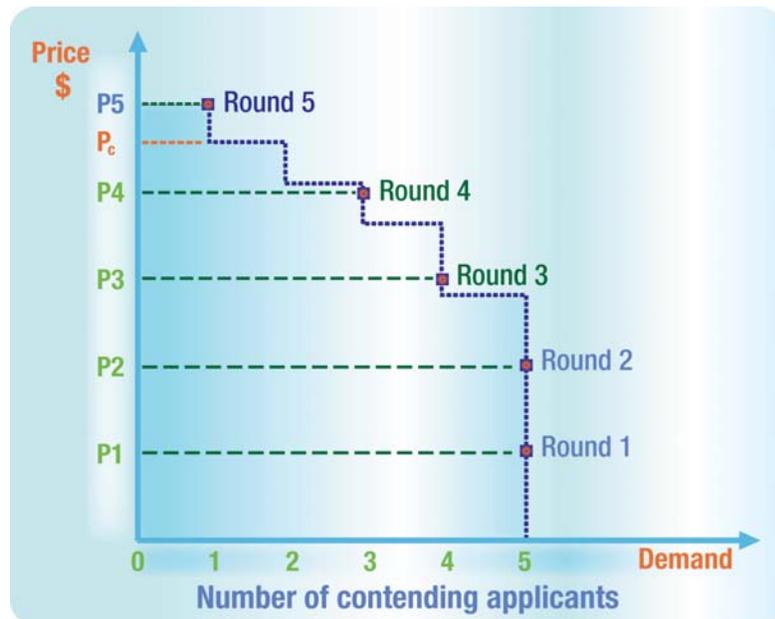


Figure 4-4 – Example of an auction for five mutually-contending applications.

- Before the first auction round, the auctioneer announces the end-of-round price  $P_1$ .
- During Auction round 1, a bid is submitted for each application. In Figure 4-4, all five bidders submit bids of at least  $P_1$ . Since the aggregate demand exceeds one, the auction proceeds to Auction round 2. The auctioneer discloses that five contending applications remained at  $P_1$  and announces the end-of-round price  $P_2$ .
- During Auction round 2, a bid is submitted for each application. In Figure 4-4, all five bidders submit bids of at least  $P_2$ . The auctioneer discloses that five contending applications remained at  $P_2$  and announces the end-of-round price  $P_3$ .
- During Auction round 3, one of the bidders submits an exit bid at slightly below  $P_3$ , while the other four bidders submit bids of at least  $P_3$ . The auctioneer discloses that four contending applications remained at  $P_3$  and announces the end-of-round price  $P_4$ .

- During Auction round 4, one of the bidders submits an exit bid midway between  $P_3$  and  $P_4$ , while the other three remaining bidders submit bids of at least  $P_4$ . The auctioneer discloses that three contending applications remained at  $P_4$  and announces the end-of-auction round price  $P_5$ .
- During Auction round 5, one of the bidders submits an exit bid at slightly above  $P_4$ , and one of the bidders submits an exit bid at  $P_c$  midway between  $P_4$  and  $P_5$ . The final bidder submits a bid greater than  $P_c$ . Since the aggregate demand at  $P_5$  does not exceed one, the auction concludes in Auction round 5. The application associated with the highest bid in Auction round 5 is deemed the successful application. The clearing price is  $P_c$ , as this is the lowest price at which aggregate demand can be met.

To the extent possible, auctions to resolve multiple string contention situations will be conducted simultaneously.

#### 4.3.1.1 Currency

For bids to be comparable, all bids in the auction will be submitted in any integer (whole) number of US dollars.

#### 4.3.1.2 Fees

A bidding deposit will be required of applicants participating in the auction, in an amount to be determined. The bidding deposit must be transmitted by wire transfer to a specified bank account specified by ICANN or its auction provider at a major international bank, to be received in advance of the auction date. The amount of the deposit will determine a bidding limit for each bidder: the bidding deposit will equal 10% of the bidding limit; and the bidder will not be permitted to submit any bid in excess of its bidding limit.

In order to avoid the need for bidders to pre-commit to a particular bidding limit, bidders may be given the option of making a specified deposit that will provide them with unlimited bidding authority for a given application. The amount of the deposit required for unlimited bidding authority will depend on the particular contention set and will be based on an assessment of the possible final prices within the auction.

All deposits from nondefaulting losing bidders will be returned following the close of the auction.

#### *4.3.2 Winning Bid Payments*

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Any applicant that participates in an auction will be required to sign a bidder agreement that acknowledges its rights and responsibilities in the auction, including that its bids are legally binding commitments to pay the amount bid if it wins (i.e., if its application is approved), and to enter into the prescribed registry agreement with ICANN— together with a specified penalty for defaulting on payment of its winning bid or failing to enter into the required registry agreement.

The winning bidder in any auction will be required to pay the full amount of the final price within 20 business days of the end of the auction. Payment is to be made by wire transfer to the same international bank account as the bidding deposit, and the applicant's bidding deposit will be credited toward the final price.

In the event that a bidder anticipates that it would require a longer payment period than 20 business days due to verifiable government-imposed currency restrictions, the bidder may advise ICANN well in advance of the auction and ICANN will consider applying a longer payment period to all bidders within the same contention set.

Any winning bidder for whom the full amount of the final price is not received within 20 business days of the end of an auction is subject to being declared in default. At their sole discretion, ICANN and its auction provider may delay the declaration of default for a brief period, but only if they are convinced that receipt of full payment is imminent.

Any winning bidder for whom the full amount of the final price is received within 20 business days of the end of an auction retains the obligation to execute the required registry agreement within 90 days of the end of auction. Such winning bidder who does not execute the agreement within 90 days of the end of the auction is subject to being declared in default. At their sole discretion, ICANN and its auction provider may delay the declaration of default for a brief period, but only if they are convinced that execution of the registry agreement is imminent.

### *4.3.3 Post-Default Procedures*

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Once declared in default, any winning bidder is subject to immediate forfeiture of its position in the auction and assessment of default penalties. After a winning bidder is declared in default, the remaining bidders will receive an offer to have their applications accepted, one at a time, in descending order of their exit bids. In this way, the next bidder would be declared the winner subject to payment of its last bid price. The same default procedures and penalties are in place for any runner-up bidder receiving such an offer.

Each bidder that is offered the relevant gTLD will be given a specified period—typically, four business days—to respond as to whether it wants the gTLD. A bidder who responds in the affirmative will have 20 business days to submit its full payment. A bidder who declines such an offer cannot revert on that statement, has no further obligations in this context and will not be considered in default.

The penalty for defaulting on a winning bid will equal 10% of the defaulting bid.<sup>2</sup> Default penalties will be charged against any defaulting applicant's bidding deposit before the associated bidding deposit is returned.

## *4.4 Contention Resolution and Contract Execution*

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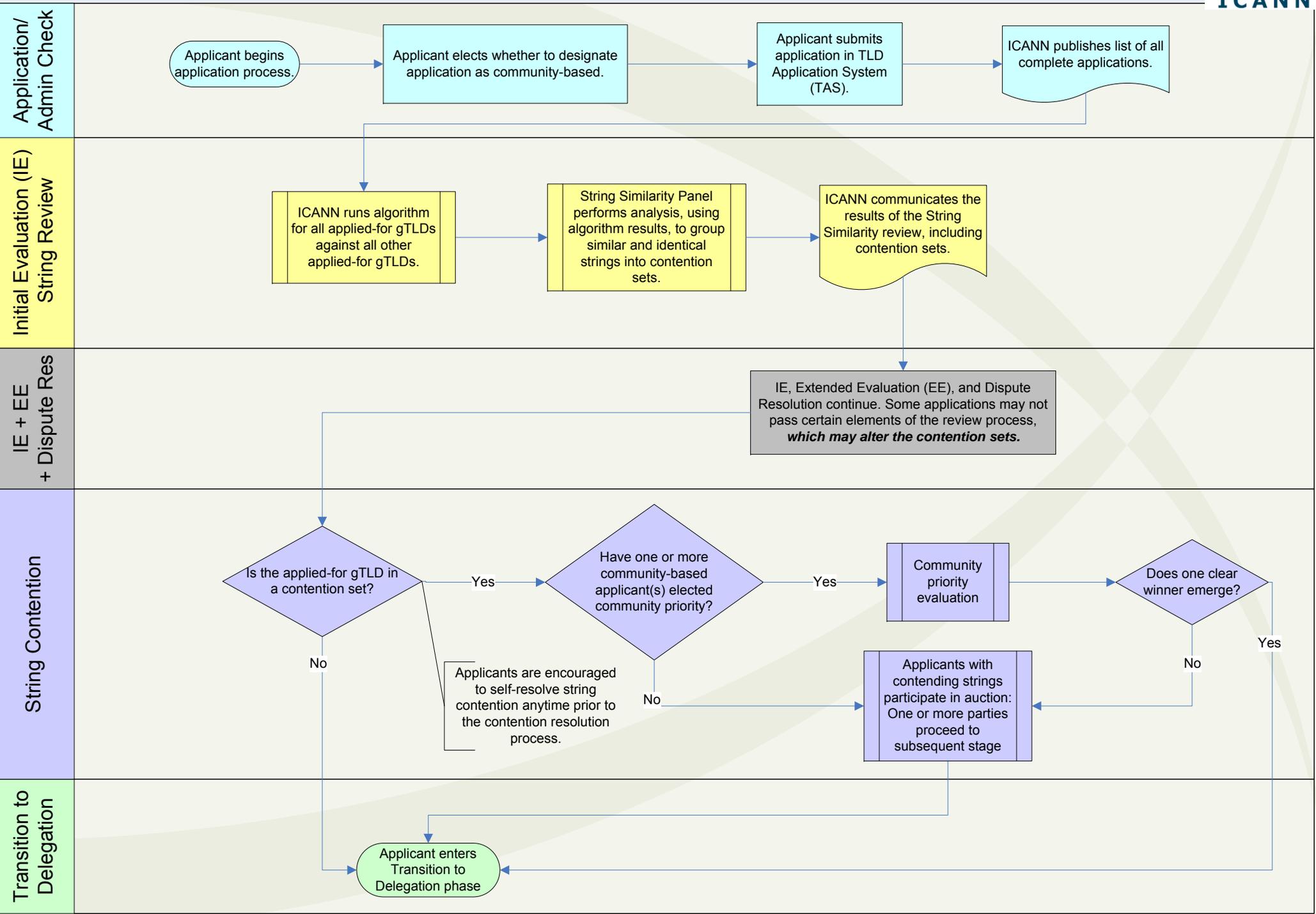
An applicant that has been declared the winner of a contention resolution process will proceed by entering into the contract execution step. (Refer to section 5.1 of Module 5.)

If a winner of the contention resolution procedure has not executed a contract within 90 days of the decision, ICANN has the right to deny that application and extend an offer to the runner-up applicant, if any, to proceed with its application. For example, in an auction, another applicant who would be considered the runner-up applicant might proceed toward delegation. This offer is at ICANN's option only. The runner-up applicant in a contention resolution process has no automatic right to an applied-for gTLD

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<sup>2</sup> If bidders were given the option of making a specified deposit that provided them with unlimited bidding authority for a given application and if the winning bidder utilized this option, then the penalty for defaulting on a winning bid will be the lesser of the following: (1) 10% of the defaulting bid, or (2) the specified deposit amount that provided the bidder with unlimited bidding authority.

string if the first place winner does not execute a contract within a specified time. If the winning applicant can demonstrate that it is working diligently and in good faith toward successful completion of the steps necessary for entry into the registry agreement, ICANN may extend the 90-day period at its discretion. Runner-up applicants have no claim of priority over the winning application, even after what might be an extended period of negotiation.





# Applicant Guidebook

(30 May 2011)

## Module 5

Potential applicants should be aware that this version of the Guidebook is for consideration and not yet approved. The proposed details of the New gTLD Program remain subject to further consultation and revision.

30 May 2011

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# Module 5

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## *Transition to Delegation*

This module describes the final steps required of an applicant for completion of the process, including execution of a registry agreement with ICANN and preparing for delegation of the new gTLD into the root zone.

### *5.1 Registry Agreement*

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All applicants that have successfully completed the evaluation process—including, if necessary, the dispute resolution and string contention processes—are required to enter into a registry agreement with ICANN before proceeding to delegation.

After the close of each stage in the process, ICANN will send a notification to those successful applicants that are eligible for execution of a registry agreement at that time.

To proceed, applicants will be asked to provide specified information for purposes of executing the registry agreement:

1. Documentation of the applicant's continued operations instrument (see Specification 8 to the agreement).
2. Confirmation of contact information and signatory to the agreement.
3. Notice of any material changes requested to the terms of the agreement.
4. The applicant must report: (i) any ownership interest it holds in any registrar or reseller of registered names, (ii) if known, any ownership interest that a registrar or reseller of registered names holds in the applicant, and (iii) if the applicant controls, is controlled by, or is under common control with any registrar or reseller of registered names. ICANN retains the right to refer an application to a competition authority prior to entry into the registry agreement if it is determined that the registry-registrar cross-ownership

arrangements might raise competition issues. For this purpose "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of securities, as trustee or executor, by serving as a member of a board of directors or equivalent governing body, by contract, by credit arrangement or otherwise.

To ensure that an applicant continues to be a going concern in good legal standing, ICANN reserves the right to ask the applicant to submit additional updated documentation and information before entering into the registry agreement.

ICANN will begin processing registry agreements one month after the date of the notification to successful applicants. Requests will be handled in the order the complete information is received.

Generally, the process will include formal approval of the agreement without requiring additional Board review, so long as: the application passed all evaluation criteria; there are no material changes in circumstances; and there are no material changes to the base agreement. There may be other cases where the Board requests review of an application.

Eligible applicants are expected to have executed the registry agreement within nine (9) months of the notification date. Failure to do so may result in loss of eligibility, at ICANN's discretion. An applicant may request an extension of this time period for up to an additional nine (9) months if it can demonstrate, to ICANN's reasonable satisfaction, that it is working diligently and in good faith toward successfully completing the steps necessary for entry into the registry agreement.

The registry agreement can be reviewed in the attachment to this module. Certain provisions in the agreement are labeled as applicable to governmental and intergovernmental entities only. Private entities, even if supported by a government or IGO, would not ordinarily be eligible for these special provisions.

All successful applicants are expected to enter into the agreement substantially as written. Applicants may request

and negotiate terms by exception; however, this extends the time involved in executing the agreement. In the event that material changes to the agreement are requested, these must first be approved by the ICANN Board of Directors before execution of the agreement.

ICANN's Board of Directors has ultimate responsibility for the New gTLD Program. The Board reserves the right to individually consider an application for a new gTLD to determine whether approval would be in the best interest of the Internet community. Under exceptional circumstances, the Board may individually consider a gTLD application. For example, the Board might individually consider an application as a result of GAC Advice on New gTLDs or of the use of an ICANN accountability mechanism.

## *5.2 Pre-Delegation Testing*

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Each applicant will be required to complete pre-delegation technical testing as a prerequisite to delegation into the root zone. This pre-delegation test must be completed within the time period specified in the registry agreement.

The purpose of the pre-delegation technical test is to verify that the applicant has met its commitment to establish registry operations in accordance with the technical and operational criteria described in Module 2.

The test is also intended to indicate that the applicant can operate the gTLD in a stable and secure manner. All applicants will be tested on a pass/fail basis according to the requirements that follow.

The test elements cover both the DNS server operational infrastructure and registry system operations. In many cases the applicant will perform the test elements as instructed and provide documentation of the results to ICANN to demonstrate satisfactory performance. At ICANN's discretion, aspects of the applicant's self-certification documentation can be audited either on-site at the services delivery point of the registry or elsewhere as determined by ICANN.

### *5.2.1 Testing Procedures*

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The applicant may initiate the pre-delegation test by submitting to ICANN the Pre-Delegation form and

accompanying documents containing all of the following information:

- All name server names and IPv4/IPv6 addresses to be used in serving the new TLD data;
- If using anycast, the list of names and IPv4/IPv6 unicast addresses allowing the identification of each individual server in the anycast sets;
- If IDN is supported, the complete IDN tables used in the registry system;
- A test zone for the new TLD must be signed at test time and the valid key-set to be used at the time of testing must be provided to ICANN in the documentation, as well as the TLD DNSSEC Policy Statement (DPS);
- The executed agreement between the selected escrow agent and the applicant; and
- Self-certification documentation as described below for each test item.

ICANN will review the material submitted and in some cases perform tests in addition to those conducted by the applicant. After testing, ICANN will assemble a report with the outcome of the tests and provide that report to the applicant.

Any clarification request, additional information request, or other request generated in the process will be highlighted and listed in the report sent to the applicant.

ICANN may request the applicant to complete load tests considering an aggregated load where a single entity is performing registry services for multiple TLDs.

Once an applicant has met all of the pre-delegation testing requirements, it is eligible to request delegation of its applied-for gTLD.

If an applicant does not complete the pre-delegation steps within the time period specified in the registry agreement, ICANN reserves the right to terminate the registry agreement.

### 5.2.2 Test Elements: DNS Infrastructure

The first set of test elements concerns the DNS infrastructure of the new gTLD. In all tests of the DNS infrastructure, all requirements are independent of whether IPv4 or IPv6 is used. All tests shall be done both over IPv4 and IPv6, with reports providing results according to both protocols.

**UDP Support** -- The DNS infrastructure to which these tests apply comprises the complete set of servers and network infrastructure to be used by the chosen providers to deliver DNS service for the new gTLD to the Internet. The documentation provided by the applicant must include the results from a system performance test indicating available network and server capacity and an estimate of expected capacity during normal operation to ensure stable service as well as to adequately address Distributed Denial of Service (DDoS) attacks.

Self-certification documentation shall include data on load capacity, latency and network reachability.

Load capacity shall be reported using a table, and a corresponding graph, showing percentage of queries responded against an increasing number of queries per second generated from local (to the servers) traffic generators. The table shall include at least 20 data points and loads of UDP-based queries that will cause up to 10% query loss against a randomly selected subset of servers within the applicant's DNS infrastructure. Responses must either contain zone data or be NXDOMAIN or NODATA responses to be considered valid.

Query latency shall be reported in milliseconds as measured by DNS probes located just outside the border routers of the physical network hosting the name servers, from a network topology point of view.

Reachability will be documented by providing information on the transit and peering arrangements for the DNS server locations, listing the AS numbers of the transit providers or peers at each point of presence and available bandwidth at those points of presence.

**TCP support** -- TCP transport service for DNS queries and responses must be enabled and provisioned for expected load. ICANN will review the capacity self-certification documentation provided by the applicant and will perform

TCP reachability and transaction capability tests across a randomly selected subset of the name servers within the applicant's DNS infrastructure. In case of use of anycast, each individual server in each anycast set will be tested.

Self-certification documentation shall include data on load capacity, latency and external network reachability.

Load capacity shall be reported using a table, and a corresponding graph, showing percentage of queries that generated a valid (zone data, NODATA, or NXDOMAIN) response against an increasing number of queries per second generated from local (to the name servers) traffic generators. The table shall include at least 20 data points and loads that will cause up to 10% query loss (either due to connection timeout or connection reset) against a randomly selected subset of servers within the applicant's DNS infrastructure.

Query latency will be reported in milliseconds as measured by DNS probes located just outside the border routers of the physical network hosting the name servers, from a network topology point of view.

Reachability will be documented by providing records of TCP-based DNS queries from nodes external to the network hosting the servers. These locations may be the same as those used for measuring latency above.

***DNSSEC support*** -- Applicant must demonstrate support for EDNS(0) in its server infrastructure, the ability to return correct DNSSEC-related resource records such as DNSKEY, RRSIG, and NSEC/NSEC3 for the signed zone, and the ability to accept and publish DS resource records from second-level domain administrators. In particular, the applicant must demonstrate its ability to support the full life cycle of KSK and ZSK keys. ICANN will review the self-certification materials as well as test the reachability, response sizes, and DNS transaction capacity for DNS queries using the EDNS(0) protocol extension with the "DNSSEC OK" bit set for a randomly selected subset of all name servers within the applicant's DNS infrastructure. In case of use of anycast, each individual server in each anycast set will be tested.

Load capacity, query latency, and reachability shall be documented as for UDP and TCP above.

### 5.2.3 Test Elements: Registry Systems

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As documented in the registry agreement, registries must provide support for EPP within their Shared Registration System, and provide Whois service both via port 43 and a web interface, in addition to support for the DNS. This section details the requirements for testing these registry systems.

**System performance** -- The registry system must scale to meet the performance requirements described in Specification 10 of the registry agreement and ICANN will require self-certification of compliance. ICANN will review the self-certification documentation provided by the applicant to verify adherence to these minimum requirements.

**Whois support** -- Applicant must provision Whois services for the anticipated load. ICANN will verify that Whois data is accessible over IPv4 and IPv6 via both TCP port 43 and via a web interface and review self-certification documentation regarding Whois transaction capacity. Response format according to Specification 4 of the registry agreement and access to Whois (both port 43 and via web) will be tested by ICANN remotely from various points on the Internet over both IPv4 and IPv6.

Self-certification documents shall describe the maximum number of queries per second successfully handled by both the port 43 servers as well as the web interface, together with an applicant-provided load expectation.

Additionally, a description of deployed control functions to detect and mitigate data mining of the Whois database shall be documented.

**EPP Support** -- As part of a shared registration service, applicant must provision EPP services for the anticipated load. ICANN will verify conformance to appropriate RFCs (including EPP extensions for DNSSEC). ICANN will also review self-certification documentation regarding EPP transaction capacity.

Documentation shall provide a maximum Transaction per Second rate for the EPP interface with 10 data points corresponding to registry database sizes from 0 (empty) to

the expected size after one year of operation, as determined by applicant.

Documentation shall also describe measures taken to handle load during initial registry operations, such as a land-rush period.

**IPv6 support** -- The ability of the registry to support registrars adding, changing, and removing IPv6 DNS records supplied by registrants will be tested by ICANN. If the registry supports EPP access via IPv6, this will be tested by ICANN remotely from various points on the Internet.

**DNSSEC support** -- ICANN will review the ability of the registry to support registrars adding, changing, and removing DNSSEC-related resource records as well as the registry's overall key management procedures. In particular, the applicant must demonstrate its ability to support the full life cycle of key changes for child domains. Inter-operation of the applicant's secure communication channels with the IANA for trust anchor material exchange will be verified.

The practice and policy document (also known as the DNSSEC Policy Statement or DPS), describing key material storage, access and usage for its own keys is also reviewed as part of this step.

**IDN support** -- ICANN will verify the complete IDN table(s) used in the registry system. The table(s) must comply with the guidelines in <http://iana.org/procedures/idn-repository.html>.

Requirements related to IDN for Whois are being developed. After these requirements are developed, prospective registries will be expected to comply with published IDN-related Whois requirements as part of pre-delegation testing.

**Escrow deposit** -- The applicant-provided samples of data deposit that include both a full and an incremental deposit showing correct type and formatting of content will be reviewed. Special attention will be given to the agreement with the escrow provider to ensure that escrowed data can be released within 24 hours should it be necessary. ICANN may, at its option, ask an independent third party to demonstrate the reconstitutability of the registry from

escrowed data. ICANN may elect to test the data release process with the escrow agent.

### 5.3 Delegation Process

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Upon notice of successful completion of the ICANN pre-delegation testing, applicants may initiate the process for delegation of the new gTLD into the root zone database.

This will include provision of additional information and completion of additional technical steps required for delegation. Information about the delegation process is available at <http://iana.org/domains/root/>.

### 5.4 Ongoing Operations

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An applicant that is successfully delegated a gTLD will become a "Registry Operator." In being delegated the role of operating part of the Internet's domain name system, the applicant will be assuming a number of significant responsibilities. ICANN will hold all new gTLD operators accountable for the performance of their obligations under the registry agreement, and it is important that all applicants understand these responsibilities.

#### 5.4.1 What is Expected of a Registry Operator

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The registry agreement defines the obligations of gTLD registry operators. A breach of the registry operator's obligations may result in ICANN compliance actions up to and including termination of the registry agreement. Prospective applicants are encouraged to review the following brief description of some of these responsibilities.

Note that this is a non-exhaustive list provided to potential applicants as an introduction to the responsibilities of a registry operator. For the complete and authoritative text, please refer to the registry agreement.

A registry operator is obligated to:

***Operate the TLD in a stable and secure manner.*** The registry operator is responsible for the entire technical operation of the TLD. As noted in RFC 1591<sup>1</sup>:

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<sup>1</sup> See <http://www.rfc-editor.org/rfc/rfc1591.txt>

“The designated manager must do a satisfactory job of operating the DNS service for the domain. That is, the actual management of the assigning of domain names, delegating subdomains and operating nameservers must be done with technical competence. This includes keeping the central IR<sup>2</sup> (in the case of top-level domains) or other higher-level domain manager advised of the status of the domain, responding to requests in a timely manner, and operating the database with accuracy, robustness, and resilience.”

The registry operator is required to comply with relevant technical standards in the form of RFCs and other guidelines. Additionally, the registry operator must meet performance specifications in areas such as system downtime and system response times (see Specifications 6 and 10 of the registry agreement).

***Comply with consensus policies and temporary policies.***

gTLD registry operators are required to comply with consensus policies. Consensus policies may relate to a range of topics such as issues affecting interoperability of the DNS, registry functional and performance specifications, database security and stability, or resolution of disputes over registration of domain names.

To be adopted as a consensus policy, a policy must be developed by the Generic Names Supporting Organization (GNSO)<sup>3</sup> following the process in Annex A of the ICANN Bylaws.<sup>4</sup> The policy development process involves deliberation and collaboration by the various stakeholder groups participating in the process, with multiple opportunities for input and comment by the public, and can take significant time.

Examples of existing consensus policies are the Inter-Registrar Transfer Policy (governing transfers of domain names between registrars), and the Registry Services Evaluation Policy (establishing a review of proposed new registry services for security and stability or competition concerns), although there are several more, as found at <http://www.icann.org/en/general/consensus-policies.htm>.

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<sup>2</sup> IR is a historical reference to “Internet Registry,” a function now performed by ICANN.

<sup>3</sup> <http://gns0.icann.org>

<sup>4</sup> <http://www.icann.org/en/general/bylaws.htm#AnnexA>

gTLD registry operators are obligated to comply with both existing consensus policies and those that are developed in the future. Once a consensus policy has been formally adopted, ICANN will provide gTLD registry operators with notice of the requirement to implement the new policy and the effective date.

In addition, the ICANN Board may, when required by circumstances, establish a temporary policy necessary to maintain the stability or security of registry services or the DNS. In such a case, all gTLD registry operators will be required to comply with the temporary policy for the designated period of time.

For more information, see Specification 1 of the registry agreement.

***Implement start-up rights protection measures.*** The registry operator must implement, at a minimum, a Sunrise period and a Trademark Claims service during the start-up phases for registration in the TLD, as provided in the registry agreement. These mechanisms will be supported by the established Trademark Clearinghouse as indicated by ICANN.

The Sunrise period allows eligible rightsholders an early opportunity to register names in the TLD.

The Trademark Claims service provides notice to potential registrants of existing trademark rights, as well as notice to rightsholders of relevant names registered. Registry operators may continue offering the Trademark Claims service after the relevant start-up phases have concluded.

For more information, see Specification 7 of the registry agreement and the Trademark Clearinghouse model accompanying this module.

***Implement post-launch rights protection measures.*** The registry operator is required to implement decisions made under the Uniform Rapid Suspension (URS) procedure, including suspension of specific domain names within the registry. The registry operator is also required to comply with and implement decisions made according to the Trademark Post-Delegation Dispute Resolution Policy (PDDRP).

The required measures are described fully in the URS and PDDRP procedures accompanying this module. Registry

operators may introduce additional rights protection measures relevant to the particular gTLD.

***Implement measures for protection of country and territory names in the new gTLD.*** All new gTLD registry operators are required to provide certain minimum protections for country and territory names, including an initial reservation requirement and establishment of applicable rules and procedures for release of these names. The rules for release can be developed or agreed to by governments, the GAC, and/or approved by ICANN after a community discussion. Registry operators are encouraged to implement measures for protection of geographical names in addition to those required by the agreement, according to the needs and interests of each gTLD's particular circumstances. (See Specification 5 of the registry agreement).

***Pay recurring fees to ICANN.*** In addition to supporting expenditures made to accomplish the objectives set out in ICANN's mission statement, these funds enable the support required for new gTLDs, including: contractual compliance, registry liaison, increased registrar accreditations, and other registry support activities. The fees include both a fixed component (USD 25,000 annually) and, where the TLD exceeds a transaction volume, a variable fee based on transaction volume. See Article 6 of the registry agreement.

***Regularly deposit data into escrow.*** This serves an important role in registrant protection and continuity for certain instances where the registry or one aspect of the registry operations experiences a system failure or loss of data. (See Specification 2 of the registry agreement.)

***Deliver monthly reports in a timely manner.*** A registry operator must submit a report to ICANN on a monthly basis. The report includes registrar transactions for the month and is used by ICANN for calculation of registrar fees. (See Specification 3 of the registry agreement.)

***Provide Whois service.*** A registry operator must provide a publicly available Whois service for registered domain names in the TLD. (See Specification 4 of the registry agreement.)

***Maintain partnerships with ICANN-accredited registrars.*** A registry operator creates a Registry-Registrar Agreement

(RRA) to define requirements for its registrars. This must include certain terms that are specified in the Registry Agreement, and may include additional terms specific to the TLD. A registry operator must provide non-discriminatory access to its registry services to all ICANN-accredited registrars with whom it has entered into an RRA, and who are in compliance with the requirements. This includes providing advance notice of pricing changes to all registrars, in compliance with the time frames specified in the agreement. (See Article 2 of the registry agreement.)

***Maintain an abuse point of contact.*** A registry operator must maintain and publish on its website a single point of contact responsible for addressing matters requiring expedited attention and providing a timely response to abuse complaints concerning all names registered in the TLD through all registrars of record, including those involving a reseller. A registry operator must also take reasonable steps to investigate and respond to any reports from law enforcement, governmental and quasi-governmental agencies of illegal conduct in connection with the use of the TLD. (See Article 2 and Specification 6 of the registry agreement.)

***Cooperate with contractual compliance audits.*** To maintain a level playing field and a consistent operating environment, ICANN staff performs periodic audits to assess contractual compliance and address any resulting problems. A registry operator must provide documents and information requested by ICANN that are necessary to perform such audits. (See Article 2 of the registry agreement.)

***Maintain a Continued Operations Instrument.*** A registry operator must, at the time of the agreement, have in place a continued operations instrument sufficient to fund basic registry operations for a period of three (3) years. This requirement remains in place for five (5) years after delegation of the TLD, after which time the registry operator is no longer required to maintain the continued operations instrument. (See Specification 8 to the registry agreement.)

***Maintain community-based policies and procedures.*** If the registry operator designated its application as community-based at the time of the application, the registry operator has requirements in its registry agreement to maintain the community-based policies and procedures it specified in its

application. The registry operator is bound by the Registry Restrictions Dispute Resolution Procedure with respect to disputes regarding execution of its community-based policies and procedures. (See Article 2 to the registry agreement.)

***Have continuity and transition plans in place.*** This includes performing failover testing on a regular basis. In the event that a transition to a new registry operator becomes necessary, the registry operator is expected to cooperate by consulting with ICANN on the appropriate successor, providing the data required to enable a smooth transition, and complying with the applicable registry transition procedures. (See Articles 2 and 4 of the registry agreement.)

***Make TLD zone files available via a standardized process.*** This includes provision of access to the registry's zone file to credentialed users, according to established access, file, and format standards. The registry operator will enter into a standardized form of agreement with zone file users and will accept credential information for users via a clearinghouse. (See Specification 4 of the registry agreement.)

***Implement DNSSEC.*** The registry operator is required to sign the TLD zone files implementing Domain Name System Security Extensions (DNSSEC) in accordance with the relevant technical standards. The registry must accept public key material from registrars for domain names registered in the TLD, and publish a DNSSEC Policy Statement describing key material storage, access, and usage for the registry's keys. (See Specification 6 of the registry agreement.)

#### ***5.4.2 What is Expected of ICANN***

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ICANN will continue to provide support for gTLD registry operators as they launch and maintain registry operations. ICANN's gTLD registry liaison function provides a point of contact for gTLD registry operators for assistance on a continuing basis.

ICANN's contractual compliance function will perform audits on a regular basis to ensure that gTLD registry operators remain in compliance with agreement obligations, as well as investigate any complaints from the community regarding the registry operator's adherence to its contractual obligations. See

<http://www.icann.org/en/compliance/> for more information on current contractual compliance activities.

ICANN's Bylaws require ICANN to act in an open and transparent manner, and to provide equitable treatment among registry operators. ICANN is responsible for maintaining the security and stability of the global Internet, and looks forward to a constructive and cooperative relationship with future gTLD registry operators in furtherance of this goal.

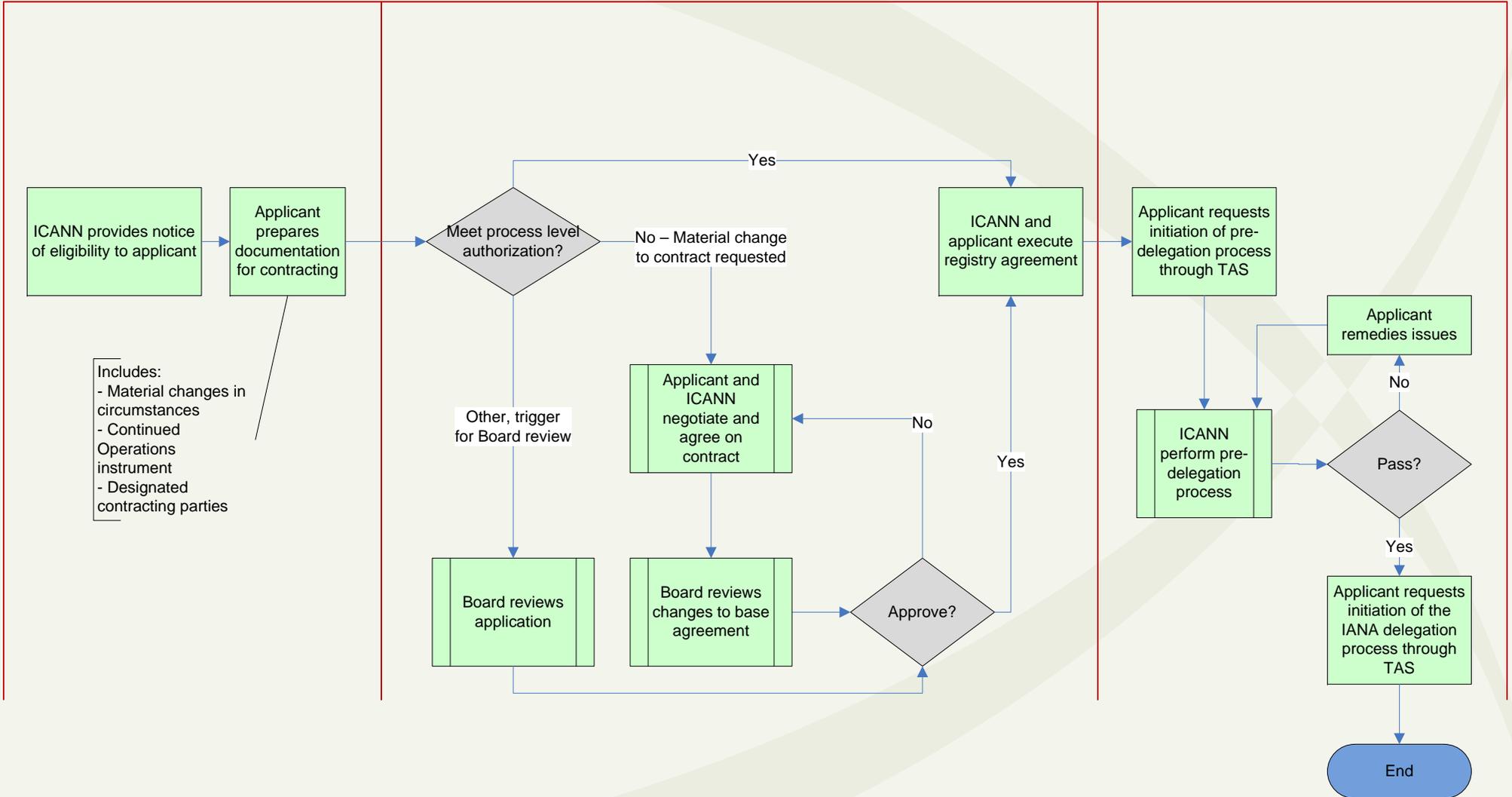
# Draft – New gTLD Program - Transition to Delegation

(Timeframes are estimates only)

## Applicant Doc Prep 1 Month

## Contracting – 1 day to 9 months

## Pre-Delegation Testing – 1 to 12 months



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# *New gTLD Agreement*

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This document contains the registry agreement associated with the Applicant Guidebook for New gTLDs.

Successful gTLD applicants would enter into this form of registry agreement with ICANN prior to delegation of the new gTLD. (Note: ICANN reserves the right to make reasonable updates and changes to this proposed agreement during the course of the application process, including as the possible result of new policies that might be adopted during the course of the application process). Background information on how this version of the draft agreement differs from the previous draft is available in the explanatory memorandum *Summary of Changes to Base Agreement*.

## REGISTRY AGREEMENT

This REGISTRY AGREEMENT (this “Agreement”) is entered into as of \_\_\_\_\_ (the “Effective Date”) between Internet Corporation for Assigned Names and Numbers, a California nonprofit public benefit corporation (“ICANN”), and \_\_\_\_\_, a \_\_\_\_\_ (“Registry Operator”).

### ARTICLE 1.

#### DELEGATION AND OPERATION OF TOP-LEVEL DOMAIN; REPRESENTATIONS AND WARRANTIES

**1.1 Domain and Designation.** The Top-Level Domain to which this Agreement applies is \_\_\_\_\_ (the “TLD”). Upon the Effective Date and until the end of the Term (as defined in Section 4.1), ICANN designates Registry Operator as the registry operator for the TLD, subject to the requirements and necessary approvals for delegation of the TLD and entry into the root-zone.

**1.2 Technical Feasibility of String.** While ICANN has encouraged and will continue to encourage universal acceptance of all top-level domain strings across the Internet, certain top-level domain strings may encounter difficulty in acceptance by ISPs and webhosters and/or validation by web applications. Registry Operator shall be responsible for ensuring to its satisfaction the technical feasibility of the TLD string prior to entering into this Agreement.

#### **1.3 Representations and Warranties.**

(a) Registry Operator represents and warrants to ICANN as follows:

(i) all material information provided and statements made in the registry TLD application, and statements made in writing during the negotiation of this Agreement, were true and correct in all material respects at the time made, and such information or statements continue to be true and correct in all material respects as of the Effective Date except as otherwise previously disclosed in writing by Registry Operator to ICANN;

(ii) Registry Operator is duly organized, validly existing and in good standing under the laws of the jurisdiction set forth in the preamble hereto, and Registry Operator has all requisite power and authority and obtained all necessary approvals to enter into and duly execute and deliver this Agreement; and

(iii) Registry Operator has delivered to ICANN a duly executed instrument that secures the funds required to perform registry functions for the TLD in the event of the termination or expiration of this Agreement (the “Continued Operations Instrument”), and such instrument is a binding obligation of the parties thereto, enforceable against the parties thereto in accordance with its terms.

(b) ICANN represents and warrants to Registry Operator that ICANN is a nonprofit public benefit corporation duly organized, validly existing and in good standing under the laws of the State of California, United States of America. ICANN has all requisite power and authority and obtained all necessary corporate approvals to enter into and duly execute and deliver this Agreement.

## ARTICLE 2.

### COVENANTS OF REGISTRY OPERATOR

Registry Operator covenants and agrees with ICANN as follows:

**2.1 Approved Services; Additional Services.** Registry Operator shall be entitled to provide the Registry Services described in clauses (a) and (b) of the first paragraph of Section 2.1 in the specification at [*see specification 6*] (“Specification 6”) and such other Registry Services set forth on Exhibit A (collectively, the “Approved Services”). If Registry Operator desires to provide any Registry Service that is not an Approved Service or is a modification to an Approved Service (each, an “Additional Service”), Registry Operator shall submit a request for approval of such Additional Service pursuant to the Registry Services Evaluation Policy at <http://www.icann.org/en/registries/rsep/rsep.html>, as such policy may be amended from time to time in accordance with the bylaws of ICANN (as amended from time to time, the “ICANN Bylaws”) applicable to Consensus Policies (the “RSEP”). Registry Operator may offer Additional Services only with the written approval of ICANN, and, upon any such approval, such Additional Services shall be deemed Registry Services under this Agreement. In its reasonable discretion, ICANN may require an amendment to this Agreement reflecting the provision of any Additional Service which is approved pursuant to the RSEP, which amendment shall be in a form reasonably acceptable to the parties.

**2.2 Compliance with Consensus Policies and Temporary Policies.** Registry Operator shall comply with and implement all Consensus Policies and Temporary Policies found at <http://www.icann.org/general/consensus-policies.htm>, as of the Effective Date and as may in the future be developed and adopted in accordance with the ICANN Bylaws, provided such future Consensus Policies and Temporary Policies are adopted in accordance with the procedure and relate to those topics and subject to those limitations set forth at [*see specification 1*]\* (“Specification 1”).

**2.3 Data Escrow.** Registry Operator shall comply with the registry data escrow procedures posted at [*see specification 2*]\*.

**2.4 Monthly Reporting.** Within twenty (20) calendar days following the end of each calendar month, Registry Operator shall deliver to ICANN reports in the format posted in the specification at [*see specification 3*]\*.

**2.5 Publication of Registration Data.** Registry Operator shall provide public access to registration data in accordance with the specification posted at [*see specification 4*]\* (“Specification 4”).

**2.6 Reserved Names.** Except to the extent that ICANN otherwise expressly authorizes in writing, Registry Operator shall comply with the restrictions on registration of character strings set forth at [*see specification 5*]\* (“Specification 5”). Registry Operator may establish policies concerning the reservation or blocking of additional character strings within the TLD at its discretion. If Registry Operator is the registrant for any domain names in the Registry TLD (other than the Second-Level Reservations for Registry Operations from Specification 5), such registrations must be through an ICANN accredited registrar. Any such registrations will be considered Transactions (as defined in Section 6.1) for purposes of calculating the Registry-Level Transaction Fee to be paid to ICANN by Registry Operator pursuant to Section 6.1.

**2.7 Registry Interoperability and Continuity.** Registry Operator shall comply with the Registry Interoperability and Continuity Specifications as set forth in Specification 6.

\* Final text will be posted on ICANN website; agreement reference to be replaced by hyperlink.

**2.8 Protection of Legal Rights of Third Parties.** Registry Operator must specify, and comply with, a process and procedures for launch of the TLD and initial registration-related and ongoing protection of the legal rights of third parties as set forth in the specification at [*see specification 7*]\* (“Specification 7”). Registry Operator may, at its election, implement additional protections of the legal rights of third parties. Any changes or modifications to the process and procedures required by Specification 7 following the Effective Date must be approved in advance by ICANN in writing. Registry Operator must comply with all remedies imposed by ICANN pursuant to Section 2 of Specification 7, subject to Registry Operator’s right to challenge such remedies as set forth in the applicable procedure described therein. Registry Operator shall take reasonable steps to investigate and respond to any reports from law enforcement and governmental and quasi-governmental agencies of illegal conduct in connection with the use of the TLD. In responding to such reports, Registry Operator will not be required to take any action in contravention of applicable law.

**2.9 Registrars.**

(a) Registry Operator must use only ICANN accredited registrars in registering domain names. Registry Operator must provide non-discriminatory access to Registry Services to all ICANN accredited registrars that enter into and are in compliance with the registry-registrar agreement for the TLD; provided, that Registry Operator may establish non-discriminatory criteria for qualification to register names in the TLD that are reasonably related to the proper functioning of the TLD. Registry Operator must use a uniform non-discriminatory agreement with all registrars authorized to register names in the TLD. Such agreement may be revised by Registry Operator from time to time; provided, however, that any such revisions must be approved in advance by ICANN.

(b) If Registry Operator (i) becomes an Affiliate or reseller of an ICANN accredited registrar, or (ii) subcontracts the provision of any Registry Services to an ICANN accredited registrar, registrar reseller or any of their respective Affiliates, then, in either such case of (i) or (ii) above, Registry Operator will give ICANN prompt notice of the contract, transaction or other arrangement that resulted in such affiliation, reseller relationship or subcontract, as applicable, including, if requested by ICANN, copies of any contract relating thereto; provided, that ICANN will not disclose such contracts to any third party other than relevant competition authorities. ICANN reserves the right, but not the obligation, to refer any such contract, transaction or other arrangement to relevant competition authorities in the event that ICANN determines that such contract, transaction or other arrangement might raise competition issues.

(c) For the purposes of this Agreement: (i) “Affiliate” means a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the person or entity specified, and (ii) “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of securities, as trustee or executor, by serving as an employee or a member of a board of directors or equivalent governing body, by contract, by credit arrangement or otherwise.

**2.10 Pricing for Registry Services.**

(a) With respect to initial domain name registrations, Registry Operator shall provide each ICANN accredited registrar that has executed the registry-registrar agreement for the TLD advance written notice of any price increase (including as a result of the elimination of any refunds, rebates, discounts, product tying or other programs which had the effect of reducing the price charged to registrars, unless such refunds, rebates, discounts, product tying or other programs are of a limited

\* Final text will be posted on ICANN website; agreement reference to be replaced by hyperlink.

duration that is clearly and conspicuously disclosed to the registrar when offered) of no less than thirty (30) calendar days. Registry Operator shall offer registrars the option to obtain initial domain name registrations for periods of one to ten years at the discretion of the registrar, but no greater than ten years.

(b) With respect to renewal of domain name registrations, Registry Operator shall provide each ICANN accredited registrar that has executed the registry-registrar agreement for the TLD advance written notice of any price increase (including as a result of the elimination of any refunds, rebates, discounts, product tying, Qualified Marketing Programs or other programs which had the effect of reducing the price charged to registrars) of no less than one hundred eighty (180) calendar days. Notwithstanding the foregoing sentence, with respect to renewal of domain name registrations: (i) Registry Operator need only provide thirty (30) calendar days notice of any price increase if the resulting price is less than or equal to (A) for the period beginning on the Effective Date and ending twelve (12) months following the Effective Date, the initial price charged for registrations in the TLD, or (B) for subsequent periods, a price for which Registry Operator provided a notice pursuant to the first sentence of this Section 2.10(b) within the twelve (12) month period preceding the effective date of the proposed price increase; and (ii) Registry Operator need not provide notice of any price increase for the imposition of the Variable Registry-Level Fee set forth in Section 6.3. Registry Operator shall offer registrars the option to obtain domain name registration renewals at the current price (i.e. the price in place prior to any noticed increase) for periods of one to ten years at the discretion of the registrar, but no greater than ten years.

(c) In addition, Registry Operator must have uniform pricing for renewals of domain name registrations (“Renewal Pricing”). For the purposes of determining Renewal Pricing, the price for each domain registration renewal must be identical to the price of all other domain name registration renewals in place at the time of such renewal, and such price must take into account universal application of any refunds, rebates, discounts, product tying or other programs in place at the time of renewal. The foregoing requirements of this Section 2.10(c) shall not apply for (i) purposes of determining Renewal Pricing if the registrar has provided Registry Operator with documentation that demonstrates that the applicable registrant expressly agreed in its registration agreement with registrar to higher Renewal Pricing at the time of the initial registration of the domain name following clear and conspicuous disclosure of such Renewal Pricing to such registrant, and (ii) discounted Renewal Pricing pursuant to a Qualified Marketing Program (as defined below). The parties acknowledge that the purpose of this Section 2.10(c) is to prohibit abusive and/or discriminatory Renewal Pricing practices imposed by Registry Operator without the written consent of the applicable registrant at the time of the initial registration of the domain and this Section 2.10(c) will be interpreted broadly to prohibit such practices. For purposes of this Section 2.10(c), a “Qualified Marketing Program” is a marketing program pursuant to which Registry Operator offers discounted Renewal Pricing, provided that each of the following criteria is satisfied: (i) the program and related discounts are offered for a period of time not to exceed one hundred eighty (180) calendar days (with consecutive substantially similar programs aggregated for purposes of determining the number of calendar days of the program), (ii) all ICANN accredited registrars are provided the same opportunity to qualify for such discounted Renewal Pricing; and (iii) the intent or effect of the program is not to exclude any particular class(es) of registrations (e.g., registrations held by large corporations) or increase the renewal price of any particular class(es) of registrations. Nothing in this Section 2.10(c) shall limit Registry Operator’s obligations pursuant to Section 2.10(b).

(d) Registry Operator shall provide public query-based DNS lookup service for the TLD (that is, operate the Registry TLD zone servers) at its sole expense.

## **2.11 Contractual and Operational Compliance Audits.**

\* Final text will be posted on ICANN website; agreement reference to be replaced by hyperlink.

(a) ICANN may from time to time (not to exceed twice per calendar year) conduct, or engage a third party to conduct, contractual compliance audits to assess compliance by Registry Operator with its representations and warranties contained in Article 1 of this Agreement and its covenants contained in Article 2 of this Agreement. Such audits shall be tailored to achieve the purpose of assessing compliance, and ICANN will (a) give reasonable advance notice of any such audit, which notice shall specify in reasonable detail the categories of documents, data and other information requested by ICANN, and (b) use commercially reasonable efforts to conduct such audit in such a manner as to not unreasonably disrupt the operations of Registry Operator. As part of such audit and upon request by ICANN, Registry Operator shall timely provide all responsive documents, data and any other information necessary to demonstrate Registry Operator's compliance with this Agreement. Upon no less than five (5) business days notice (unless otherwise agreed to by Registry Operator), ICANN may, as part of any contractual compliance audit, conduct site visits during regular business hours to assess compliance by Registry Operator with its representations and warranties contained in Article 1 of this Agreement and its covenants contained in Article 2 of this Agreement.

(b) Any audit conducted pursuant to Section 2.11(a) will be at ICANN's expense, unless (i) Registry Operator (A) controls, is controlled by, is under common control or is otherwise Affiliated with, any ICANN accredited registrar or registrar reseller or any of their respective Affiliates, or (B) has subcontracted the provision of Registry Services to an ICANN accredited registrar or registrar reseller or any of their respective Affiliates, and, in either case of (A) or (B) above, the audit relates to Registry Operator's compliance with Section 2.14, in which case Registry Operator shall reimburse ICANN for all reasonable costs and expenses associated with the portion of the audit related to Registry Operator's compliance with Section 2.14, or (ii) the audit is related to a discrepancy in the fees paid by Registry Operator hereunder in excess of 5% to ICANN's detriment, in which case Registry Operator shall reimburse ICANN for all reasonable costs and expenses associated with the entirety of such audit. In either such case of (i) or (ii) above, such reimbursement will be paid together with the next Registry-Level Fee payment due following the date of transmittal of the cost statement for such audit.

(c) Notwithstanding Section 2.11(a), if Registry Operator is found not to be in compliance with its representations and warranties contained in Article 1 of this Agreement or its covenants contained in Article 2 of this Agreement in two consecutive audits conducted pursuant to this Section 2.11, ICANN may increase the number of such audits to one per calendar quarter.

(d) Registry Operator will give ICANN immediate notice of the commencement of any of the proceedings referenced in Section 4.3(d) or the occurrence of any of the matters specified in Section 4.3(f).

**2.12 Continued Operations Instrument.** Registry Operator shall comply with the terms and conditions relating to the Continued Operations Instrument set forth in the specification at [*see specification 8*].

**2.13 Emergency Transition.** Registry Operator agrees that in the event that any of the registry functions set forth in Section 6 of Specification 10 fails for a period longer than the emergency threshold for such function set forth in Section 6 of Specification 10, ICANN may designate an emergency interim registry operator of the registry for the TLD (an "Emergency Operator") in accordance with ICANN's registry transition process (available at \_\_\_\_\_) (as the same may be amended from time to time, the "Registry Transition Process") until such time as Registry Operator has demonstrated to ICANN's reasonable satisfaction that it can resume operation of the registry for the TLD without the reoccurrence of such failure. Following such demonstration, Registry Operator may transition back into operation of the registry for the TLD pursuant to the procedures set out in the Registry Transition Process,

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provided that Registry Operator pays all reasonable costs incurred (i) by ICANN as a result of the designation of the Emergency Operator and (ii) by the Emergency Operator in connection with the operation of the registry for the TLD, which costs shall be documented in reasonable detail in records that shall be made available to Registry Operator. In the event ICANN designates an Emergency Operator pursuant to this Section 2.13 and the Registry Transition Process, Registry Operator shall provide ICANN or any such Emergency Operator with all data (including the data escrowed in accordance with Section 2.3) regarding operations of the registry for the TLD necessary to maintain operations and registry functions that may be reasonably requested by ICANN or such Emergency Operator. Registry Operator agrees that ICANN may make any changes it deems necessary to the IANA database for DNS and WHOIS records with respect to the TLD in the event that an Emergency Operator is designated pursuant to this Section 2.13. In addition, in the event of such failure, ICANN shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable.

**2.14 Registry Code of Conduct.** In connection with the operation of the registry for the TLD, Registry Operator shall comply with the Registry Code of Conduct as set forth in the specification at [*see specification 9*].

**2.15 Cooperation with Economic Studies.** If ICANN initiates or commissions an economic study on the impact or functioning of new generic top-level domains on the Internet, the DNS or related matters, Registry Operator shall reasonably cooperate with such study, including by delivering to ICANN or its designee conducting such study all data reasonably necessary for the purposes of such study requested by ICANN or its designee, provided, that Registry Operator may withhold any internal analyses or evaluations prepared by Registry Operator with respect to such data. Any data delivered to ICANN or its designee pursuant to this Section 2.15 shall be fully aggregated and anonymized by ICANN or its designee prior to any disclosure of such data to any third party.

**2.16 Registry Performance Specifications.** Registry Performance Specifications for operation of the TLD will be as set forth in the specification at [*see specification 10*]\*. Registry Operator shall comply with such Performance Specifications and, for a period of at least one year, shall keep technical and operational records sufficient to evidence compliance with such specifications for each calendar year during the Term.

**2.17 Personal Data.** Registry Operator shall (i) notify each ICANN-accredited registrar that is a party to the registry-registrar agreement for the TLD of the purposes for which data about any identified or identifiable natural person (“Personal Data”) submitted to Registry Operator by such registrar is collected and used under this Agreement or otherwise and the intended recipients (or categories of recipients) of such Personal Data, and (ii) require such registrar to obtain the consent of each registrant in the TLD for such collection and use of Personal Data. Registry Operator shall take reasonable steps to protect Personal Data collected from such registrar from loss, misuse, unauthorized disclosure, alteration or destruction. Registry Operator shall not use or authorize the use of Personal Data in a way that is incompatible with the notice provided to registrars.

**2.18 [Note: For Community-Based TLDs Only] Obligations of Registry Operator to TLD Community.** Registry Operator shall establish registration policies in conformity with the application submitted with respect to the TLD for: (i) naming conventions within the TLD, (ii) requirements for registration by members of the TLD community, and (iii) use of registered domain names in conformity with the stated purpose of the community-based TLD. Registry Operator shall operate the TLD in a manner that allows the TLD community to discuss and participate in the development and modification of policies and practices for the TLD. Registry Operator shall establish procedures for the enforcement of registration policies for the TLD, and resolution of disputes concerning compliance with TLD registration

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policies, and shall enforce such registration policies. Registry Operator agrees to implement and be bound by the Registry Restrictions Dispute Resolution Procedure as set forth at [*insert applicable URL*] with respect to disputes arising pursuant to this Section 2.18.]

### ARTICLE 3.

#### COVENANTS OF ICANN

ICANN covenants and agrees with Registry Operator as follows:

**3.1 Open and Transparent.** Consistent with ICANN's expressed mission and core values, ICANN shall operate in an open and transparent manner.

**3.2 Equitable Treatment.** ICANN shall not apply standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably and shall not single out Registry Operator for disparate treatment unless justified by substantial and reasonable cause.

**3.3 TLD Nameservers.** ICANN will use commercially reasonable efforts to ensure that any changes to the TLD nameserver designations submitted to ICANN by Registry Operator (in a format and with required technical elements specified by ICANN at <http://www.iana.org/domains/root/> will be implemented by ICANN within seven (7) calendar days or as promptly as feasible following technical verifications.

**3.4 Root-zone Information Publication.** ICANN's publication of root-zone contact information for the TLD will include Registry Operator and its administrative and technical contacts. Any request to modify the contact information for the Registry Operator must be made in the format specified from time to time by ICANN at <http://www.iana.org/domains/root/>.

**3.5 Authoritative Root Database.** To the extent that ICANN is authorized to set policy with regard to an authoritative root server system, ICANN shall use commercially reasonable efforts to (a) ensure that the authoritative root will point to the top-level domain nameservers designated by Registry Operator for the TLD, (b) maintain a stable, secure, and authoritative publicly available database of relevant information about the TLD, in accordance with ICANN publicly available policies and procedures, and (c) coordinate the Authoritative Root Server System so that it is operated and maintained in a stable and secure manner; provided, that ICANN shall not be in breach of this Agreement and ICANN shall have no liability in the event that any third party (including any governmental entity or internet service provider) blocks or restricts access to the TLD in any jurisdiction.

### ARTICLE 4.

#### TERM AND TERMINATION

**4.1 Term.** The term of this Agreement will be ten years from the Effective Date (as such term may be extended pursuant to Section 4.2, the "Term").

**4.2 Renewal.**

(a) This Agreement will be renewed for successive periods of ten years upon the expiration of the initial Term set forth in Section 4.1 and each successive Term, unless:

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(i) Following notice by ICANN to Registry Operator of a fundamental and material breach of Registry Operator's covenants set forth in Article 2 or breach of its payment obligations under Article 6 of this Agreement, which notice shall include with specificity the details of the alleged breach, and such breach has not been cured within thirty (30) calendar days of such notice, (A) an arbitrator or court has finally determined that Registry Operator has been in fundamental and material breach of such covenant(s) or in breach of its payment obligations, and (B) Registry Operator has failed to comply with such determination and cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court; or

(ii) During the then current Term, Registry Operator shall have been found by an arbitrator (pursuant to Section 5.2 of this Agreement) on at least three (3) separate occasions to have been in fundamental and material breach (whether or not cured) of Registry Operator's covenants set forth in Article 2 or breach of its payment obligations under Article 6 of this Agreement.

(b) Upon the occurrence of the events set forth in Section 4.2(a) (i) or (ii), the Agreement shall terminate at the expiration of the then current Term.

#### **4.3 Termination by ICANN.**

(a) ICANN may, upon notice to Registry Operator, terminate this Agreement if: (i) Registry Operator fails to cure (A) any fundamental and material breach of Registry Operator's representations and warranties set forth in Article 1 or covenants set forth in Article 2, or (B) any breach of Registry Operator's payment obligations set forth in Article 6 of this Agreement, each within thirty (30) calendar days after ICANN gives Registry Operator notice of such breach, which notice will include with specificity the details of the alleged breach, (ii) an arbitrator or court has finally determined that Registry Operator is in fundamental and material breach of such covenant(s) or in breach of its payment obligations, and (iii) Registry Operator fails to comply with such determination and cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court.

(b) ICANN may, upon notice to Registry Operator, terminate this Agreement if Registry Operator fails to complete all testing and procedures (identified by ICANN in writing to Registry Operator prior to the date hereof) for delegation of the TLD into the root zone within twelve (12) months of the Effective Date. Registry Operator may request an extension for up to additional twelve (12) months for delegation if it can demonstrate, to ICANN's reasonable satisfaction, that Registry Operator is working diligently and in good faith toward successfully completing the steps necessary for delegation of the TLD. Any fees paid by Registry Operator to ICANN prior to such termination date shall be retained by ICANN in full.

(c) ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator fails to cure a material breach of Registry Operator's obligations set forth in Section 2.12 of this Agreement within thirty (30) calendar days of delivery of notice of such breach by ICANN, or if the Continued Operations Instrument is not in effect for greater than sixty (60) consecutive calendar days at any time following the Effective Date, (ii) an arbitrator or court has finally determined that Registry Operator is in material breach of such covenant, and (iii) Registry Operator fails to cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court.

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(d) ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator makes an assignment for the benefit of creditors or similar act, (ii) attachment, garnishment or similar proceedings are commenced against Registry Operator, which proceedings are a material threat to Registry Operator's ability to operate the registry for the TLD, and are not dismissed within sixty (60) days of their commencement, (iii) a trustee, receiver, liquidator or equivalent is appointed in place of Registry Operator or maintains control over any of Registry Operator's property, (iv) execution is levied upon any property of Registry Operator, (v) proceedings are instituted by or against Registry Operator under any bankruptcy, insolvency, reorganization or other laws relating to the relief of debtors and such proceedings are not dismissed within thirty (30) days of their commencement, or (vi) Registry Operator files for protection under the United States Bankruptcy Code, 11 U.S.C. Section 101 et seq., or a foreign equivalent or liquidates, dissolves or otherwise discontinues its operations or the operation of the TLD.

(e) ICANN may, upon thirty (30) calendar days' notice to Registry Operator, terminate this Agreement pursuant to Section 2 of Specification 7, subject to Registry Operator's right to challenge such termination as set forth in the applicable procedure described therein.

(f) ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator knowingly employs any officer that is convicted of a misdemeanor related to financial activities or of any felony, or is judged by a court of competent jurisdiction to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN reasonably deems as the substantive equivalent of any of the foregoing and such officer is not terminated within thirty (30) calendar days of Registry Operator's knowledge of the foregoing, or (ii) any member of Registry Operator's board of directors or similar governing body is convicted of a misdemeanor related to financial activities or of any felony, or is judged by a court of competent jurisdiction to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN reasonably deems as the substantive equivalent of any of the foregoing and such member is not removed from Registry Operator's board of directors or similar governing body within thirty (30) calendar days of Registry Operator's knowledge of the foregoing.

(g) *[Applicable to intergovernmental organizations or governmental entities only.]*  
ICANN may terminate this Agreement pursuant to Section 7.14.

#### **4.4 Termination by Registry Operator.**

(a) Registry Operator may terminate this Agreement upon notice to ICANN if, (i) ICANN fails to cure any fundamental and material breach of ICANN's covenants set forth in Article 3, within thirty (30) calendar days after Registry Operator gives ICANN notice of such breach, which notice will include with specificity the details of the alleged breach, (ii) an arbitrator or court has finally determined that ICANN is in fundamental and material breach of such covenants, and (iii) ICANN fails to comply with such determination and cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court.

(b) Registry Operator may terminate this Agreement for any reason upon one hundred eighty (180) calendar day advance notice to ICANN.

**4.5 Transition of Registry upon Termination of Agreement.** Upon expiration of the Term pursuant to Section 4.1 or Section 4.2 or any termination of this Agreement pursuant to Section 4.3 or Section 4.4, Registry Operator shall provide ICANN or any successor registry operator that may be designated by ICANN for the TLD in accordance with this Section 4.5 with all data (including the data

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escrowed in accordance with Section 2.3) regarding operations of the registry for the TLD necessary to maintain operations and registry functions that may be reasonably requested by ICANN or such successor registry operator. After consultation with Registry Operator, ICANN shall determine whether or not to transition operation of the TLD to a successor registry operator in its sole discretion and in conformance with the Registry Transition Process; provided, however, that if Registry Operator demonstrates to ICANN's reasonable satisfaction that (i) all domain name registrations in the TLD are registered to, and maintained by, Registry Operator for its own exclusive use, (ii) Registry Operator does not sell, distribute or transfer control or use of any registrations in the TLD to any third party that is not an Affiliate of Registry Operator, and (iii) transitioning operation of the TLD is not necessary to protect the public interest, then ICANN may not transition operation of the TLD to a successor registry operator upon the expiration or termination of this Agreement without the consent of Registry Operator (which shall not be unreasonably withheld, conditioned or delayed). For the avoidance of doubt, the foregoing sentence shall not prohibit ICANN from delegating the TLD pursuant to a future application process for the delegation of top-level domains, subject to any processes and objection procedures instituted by ICANN in connection with such application process intended to protect the rights of third parties. Registry Operator agrees that ICANN may make any changes it deems necessary to the IANA database for DNS and WHOIS records with respect to the TLD in the event of a transition of the TLD pursuant to this Section 4.5. In addition, ICANN or its designee shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable, regardless of the reason for termination or expiration of this Agreement.

*[Alternative Section 4.5 Transition of Registry upon Termination of Agreement text for intergovernmental organizations or governmental entities or other special circumstances:*

**“Transition of Registry upon Termination of Agreement.** Upon expiration of the Term pursuant to Section 4.1 or Section 4.2 or any termination of this Agreement pursuant to Section 4.3 or Section 4.4, in connection with ICANN's designation of a successor registry operator for the TLD, Registry Operator and ICANN agree to consult each other and work cooperatively to facilitate and implement the transition of the TLD in accordance with this Section 4.5. After consultation with Registry Operator, ICANN shall determine whether or not to transition operation of the TLD to a successor registry operator in its sole discretion and in conformance with the Registry Transition Process. In the event ICANN determines to transition operation of the TLD to a successor registry operator, upon Registry Operator's consent (which shall not be unreasonably withheld, conditioned or delayed), Registry Operator shall provide ICANN or such successor registry operator for the TLD with any data regarding operations of the TLD necessary to maintain operations and registry functions that may be reasonably requested by ICANN or such successor registry operator in addition to data escrowed in accordance with Section 2.3 hereof. In the event that Registry Operator does not consent to provide such data, any registry data related to the TLD shall be returned to Registry Operator, unless otherwise agreed upon by the parties. Registry Operator agrees that ICANN may make any changes it deems necessary to the IANA database for DNS and WHOIS records with respect to the TLD in the event of a transition of the TLD pursuant to this Section 4.5. In addition, ICANN or its designee shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable, regardless of the reason for termination or expiration of this Agreement.”]

**4.6 Effect of Termination.** Upon any expiration of the Term or termination of this Agreement, the obligations and rights of the parties hereto shall cease, provided that such expiration or termination of this Agreement shall not relieve the parties of any obligation or breach of this Agreement accruing prior to such expiration or termination, including, without limitation, all accrued payment obligations arising under Article 6. In addition, Article 5, Article 7, Section 2.12, Section 4.5, and this

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Section 4.6 shall survive the expiration or termination of this Agreement. For the avoidance of doubt, the rights of Registry Operator to operate the registry for the TLD shall immediately cease upon any expiration of the Term or termination of this Agreement.

## ARTICLE 5.

### DISPUTE RESOLUTION

**5.1 Cooperative Engagement.** Before either party may initiate arbitration pursuant to Section 5.2 below, ICANN and Registry Operator, following initiation of communications by either party, must attempt to resolve the dispute by engaging in good faith discussion over a period of at least fifteen (15) calendar days.

**5.2 Arbitration.** Disputes arising under or in connection with this Agreement, including requests for specific performance, will be resolved through binding arbitration conducted pursuant to the rules of the International Court of Arbitration of the International Chamber of Commerce. The arbitration will be conducted in the English language and will occur in Los Angeles County, California. Any arbitration will be in front of a single arbitrator, unless (i) ICANN is seeking punitive or exemplary damages, or operational sanctions, or (ii) the parties agree in writing to a greater number of arbitrators. In either case of clauses (i) or (ii) in the preceding sentence, the arbitration will be in front of three arbitrators with each party selecting one arbitrator and the two selected arbitrators selecting the third arbitrator. In order to expedite the arbitration and limit its cost, the arbitrator(s) shall establish page limits for the parties' filings in conjunction with the arbitration, and should the arbitrator(s) determine that a hearing is necessary, the hearing shall be limited to one (1) calendar day, provided that in any arbitration in which ICANN is seeking punitive or exemplary damages, or operational sanctions, the hearing may be extended for one (1) additional calendar day if agreed upon by the parties or ordered by the arbitrator(s) based on the arbitrator(s) independent determination or the reasonable request of one of the parties thereto. The prevailing party in the arbitration will have the right to recover its costs and reasonable attorneys' fees, which the arbitrator(s) shall include in the awards. In the event the arbitrators determine that Registry Operator has been repeatedly and willfully in fundamental and material breach of its obligations set forth in Article 2, Article 6 or Section 5.4 of this Agreement, ICANN may request the arbitrators award punitive or exemplary damages, or operational sanctions (including without limitation an order temporarily restricting Registry Operator's right to sell new registrations). In any litigation involving ICANN concerning this Agreement, jurisdiction and exclusive venue for such litigation will be in a court located in Los Angeles County, California; however, the parties will also have the right to enforce a judgment of such a court in any court of competent jurisdiction.

[Alternative **Section 5.2 Arbitration** text for intergovernmental organizations or governmental entities or other special circumstances:

**“Arbitration.** Disputes arising under or in connection with this Agreement, including requests for specific performance, will be resolved through binding arbitration conducted pursuant to the rules of the International Court of Arbitration of the International Chamber of Commerce. The arbitration will be conducted in the English language and will occur in Geneva, Switzerland, unless another location is mutually agreed upon by Registry Operator and ICANN. Any arbitration will be in front of a single arbitrator, unless (i) ICANN is seeking punitive or exemplary damages, or operational sanctions, or (ii) the parties agree in writing to a greater number of arbitrators. In either case of clauses (i) or (ii) in the preceding sentence, the arbitration will be in front of three arbitrators with each party selecting one arbitrator and the two selected arbitrators selecting the third arbitrator. In order to expedite the arbitration and limit its cost, the arbitrator(s) shall establish page limits for the parties' filings in conjunction with the

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arbitration, and should the arbitrator(s) determine that a hearing is necessary, the hearing shall be limited to one (1) calendar day, provided that in any arbitration in which ICANN is seeking punitive or exemplary damages, or operational sanctions, the hearing may be extended for one (1) additional calendar day if agreed upon by the parties or ordered by the arbitrator(s) based on the arbitrator(s) independent determination or the reasonable request of one of the parties thereto. The prevailing party in the arbitration will have the right to recover its costs and reasonable attorneys' fees, which the arbitrator(s) shall include in the awards. In the event the arbitrators determine that Registry Operator has been repeatedly and willfully in fundamental and material breach of its obligations set forth in Article 2, Article 6 or Section 5.4 of this Agreement, ICANN may request the arbitrators award punitive or exemplary damages, or operational sanctions (including without limitation an order temporarily restricting Registry Operator's right to sell new registrations). In any litigation involving ICANN concerning this Agreement, jurisdiction and exclusive venue for such litigation will be in a court located in Geneva, Switzerland, unless an another location is mutually agreed upon by Registry Operator and ICANN; however, the parties will also have the right to enforce a judgment of such a court in any court of competent jurisdiction."}]

**5.3 Limitation of Liability.** ICANN's aggregate monetary liability for violations of this Agreement will not exceed an amount equal to the Registry-Level Fees paid by Registry Operator to ICANN within the preceding twelve-month period pursuant to this Agreement (excluding the Variable Registry-Level Fee set forth in Section 6.3, if any). Registry Operator's aggregate monetary liability to ICANN for breaches of this Agreement will be limited to an amount equal to the fees paid to ICANN during the preceding twelve-month period (excluding the Variable Registry-Level Fee set forth in Section 6.3, if any), and punitive and exemplary damages, if any, awarded in accordance with Section 5.2. In no event shall either party be liable for special, punitive, exemplary or consequential damages arising out of or in connection with this Agreement or the performance or nonperformance of obligations undertaken in this Agreement, except as provided in Section 5.2. Except as otherwise provided in this Agreement, neither party makes any warranty, express or implied, with respect to the services rendered by itself, its servants or agents, or the results obtained from their work, including, without limitation, any implied warranty of merchantability, non-infringement or fitness for a particular purpose.

**5.4 Specific Performance.** Registry Operator and ICANN agree that irreparable damage could occur if any of the provisions of this Agreement was not performed in accordance with its specific terms. Accordingly, the parties agree that they each shall be entitled to seek from the arbitrator specific performance of the terms of this Agreement (in addition to any other remedy to which each party is entitled).

## ARTICLE 6.

### FEES

**6.1 Registry-Level Fees.** Registry Operator shall pay ICANN a Registry-Level Fee equal to (i) the Registry Fixed Fee of US\$6,250 per calendar quarter and (ii) the Registry-Level Transaction Fee. The Registry-Level Transaction Fee will be equal to the number of annual increments of an initial or renewal domain name registration (at one or more levels, and including renewals associated with transfers from one ICANN-accredited registrar to another, each a "Transaction"), during the applicable calendar quarter multiplied by US\$0.25; provided, however that the Registry-Level Transaction Fee shall not apply until and unless more than 50,000 Transactions have occurred in the TLD during any calendar quarter or any four calendar quarter period (the "Transaction Threshold") and shall apply to each Transaction that occurred during each quarter in which the Transaction Threshold has been met, but shall not apply to each quarter in which the Transaction Threshold has not been met. Registry Operator shall pay the Registry-

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Level Fees on a quarterly basis by the 20th day following the end of each calendar quarter (i.e., on April 20, July 20, October 20 and January 20 for the calendar quarters ending March 31, June 30, September 30 and December 31) of the year to an account designated by ICANN.

**6.2 Cost Recovery for RSTEP.** Requests by Registry Operator for the approval of Additional Services pursuant to Section 2.1 may be referred by ICANN to the Registry Services Technical Evaluation Panel ("RSTEP") pursuant to that process at <http://www.icann.org/en/registries/rsep/>. In the event that such requests are referred to RSTEP, Registry Operator shall remit to ICANN the invoiced cost of the RSTEP review within ten (10) business days of receipt of a copy of the RSTEP invoice from ICANN, unless ICANN determines, in its sole and absolute discretion, to pay all or any portion of the invoiced cost of such RSTEP review.

**6.3 Variable Registry-Level Fee.**

(a) If the ICANN accredited registrars (as a group) do not approve pursuant to the terms of their registrar accreditation agreements with ICANN the variable accreditation fees established by the ICANN Board of Directors for any ICANN fiscal year, upon delivery of notice from ICANN, Registry Operator shall pay to ICANN a Variable Registry-Level Fee, which shall be paid on a fiscal quarter basis, and shall accrue as of the beginning of the first fiscal quarter of such ICANN fiscal year. The fee will be calculated and invoiced by ICANN on a quarterly basis, and shall be paid by Registry Operator within sixty (60) calendar days with respect to the first quarter of such ICANN fiscal year and within twenty (20) calendar days with respect to each remaining quarter of such ICANN fiscal year, of receipt of the invoiced amount by ICANN. The Registry Operator may invoice and collect the Variable Registry-Level Fees from the registrars who are party to a registry-registrar agreement with Registry Operator (which agreement may specifically provide for the reimbursement of Variable Registry-Level Fees paid by Registry Operator pursuant to this Section 6.3); provided, that the fees shall be invoiced to all ICANN accredited registrars if invoiced to any. The Variable Registry-Level Fee, if collectible by ICANN, shall be an obligation of Registry Operator and shall be due and payable as provided in this Section 6.3 irrespective of Registry Operator's ability to seek and obtain reimbursement of such fee from registrars. In the event ICANN later collects variable accreditation fees for which Registry Operator has paid ICANN a Variable Registry-Level Fee, ICANN shall reimburse the Registry Operator an appropriate amount of the Variable Registry-Level Fee, as reasonably determined by ICANN. If the ICANN accredited registrars (as a group) do approve pursuant to the terms of their registrar accreditation agreements with ICANN the variable accreditation fees established by the ICANN Board of Directors for a fiscal year, ICANN shall not be entitled to a Variable-Level Fee hereunder for such fiscal year, irrespective of whether the ICANN accredited registrars comply with their payment obligations to ICANN during such fiscal year.

(b) The amount of the Variable Registry-Level Fee will be specified for each registrar, and may include both a per-registrar component and a transactional component. The per-registrar component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each ICANN fiscal year. The transactional component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each ICANN fiscal year but shall not exceed US\$0.25 per domain name registration (including renewals associated with transfers from one ICANN-accredited registrar to another) per year.

**6.4 Adjustments to Fees.** Notwithstanding any of the fee limitations set forth in this Article 6, commencing upon the expiration of the first year of this Agreement, and upon the expiration of each year thereafter during the Term, the then current fees set forth in Section 6.1 and Section 6.3 may be

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adjusted, at ICANN's discretion, by a percentage equal to the percentage change, if any, in (i) the Consumer Price Index for All Urban Consumers, U.S. City Average (1982-1984 = 100) published by the United States Department of Labor, Bureau of Labor Statistics, or any successor index (the "CPI") for the month which is one (1) month prior to the commencement of the applicable year, over (ii) the CPI published for the month which is one (1) month prior to the commencement of the immediately prior year. In the event of any such increase, ICANN shall provide notice to Registry Operator specifying the amount of such adjustment. Any fee adjustment under this Section 6.4 shall be effective as of the first day of the year in which the above calculation is made.

**6.5 Additional Fee on Late Payments.** For any payments thirty (30) calendar days or more overdue under this Agreement, Registry Operator shall pay an additional fee on late payments at the rate of 1.5% per month or, if less, the maximum rate permitted by applicable law.

## ARTICLE 7.

### MISCELLANEOUS

#### 7.1 Indemnification of ICANN.

(a) Registry Operator shall indemnify and defend ICANN and its directors, officers, employees, and agents (collectively, "Indemnitees") from and against any and all third-party claims, damages, liabilities, costs, and expenses, including reasonable legal fees and expenses, arising out of or relating to intellectual property ownership rights with respect to the TLD, the delegation of the TLD to Registry Operator, Registry Operator's operation of the registry for the TLD or Registry Operator's provision of Registry Services, provided that Registry Operator shall not be obligated to indemnify or defend any Indemnitee to the extent the claim, damage, liability, cost or expense arose: (i) due to the actions or omissions of ICANN, its subcontractors, panelists or evaluators specifically related to and occurring during the registry TLD application process (other than actions or omissions requested by or for the benefit of Registry Operator), or (ii) due to a breach by ICANN of any obligation contained in this Agreement or any willful misconduct by ICANN. This Section shall not be deemed to require Registry Operator to reimburse or otherwise indemnify ICANN for costs associated with the negotiation or execution of this Agreement, or with monitoring or management of the parties' respective obligations hereunder. Further, this Section shall not apply to any request for attorney's fees in connection with any litigation or arbitration between or among the parties, which shall be governed by Article 5 or otherwise awarded by a court or arbitrator.

[Alternative **Section 7.1(a)** text for intergovernmental organizations or governmental entities:

"Registry Operator shall use its best efforts to cooperate with ICANN in order to ensure that ICANN does not incur any costs associated with claims, damages, liabilities, costs and expenses, including reasonable legal fees and expenses, arising out of or relating to intellectual property ownership rights with respect to the TLD, the delegation of the TLD to Registry Operator, Registry Operator's operation of the registry for the TLD or Registry Operator's provision of Registry Services, provided that Registry Operator shall not be obligated to provide such cooperation to the extent the claim, damage, liability, cost or expense arose due to a breach by ICANN of any of its obligations contained in this Agreement or any willful misconduct by ICANN. This Section shall not be deemed to require Registry Operator to reimburse or otherwise indemnify ICANN for costs associated with the negotiation or execution of this Agreement, or with monitoring or management of the parties' respective obligations hereunder. Further, this Section shall not apply to any request for attorney's fees in connection with any

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litigation or arbitration between or among the parties, which shall be governed by Article 5 or otherwise awarded by a court or arbitrator.”]

(b) For any claims by ICANN for indemnification whereby multiple registry operators (including Registry Operator) have engaged in the same actions or omissions that gave rise to the claim, Registry Operator’s aggregate liability to indemnify ICANN with respect to such claim shall be limited to a percentage of ICANN’s total claim, calculated by dividing the number of total domain names under registration with Registry Operator within the TLD (which names under registration shall be calculated consistently with Article 6 hereof for any applicable quarter) by the total number of domain names under registration within all top level domains for which the registry operators thereof are engaging in the same acts or omissions giving rise to such claim. For the purposes of reducing Registry Operator’s liability under Section 7.1(a) pursuant to this Section 7.1(b), Registry Operator shall have the burden of identifying the other registry operators that are engaged in the same actions or omissions that gave rise to the claim, and demonstrating, to ICANN’s reasonable satisfaction, such other registry operators’ culpability for such actions or omissions. For the avoidance of doubt, in the event that a registry operator is engaged in the same acts or omissions giving rise to the claims, but such registry operator(s) do not have the same or similar indemnification obligations to ICANN as set forth in Section 7.1(a) above, the number of domains under management by such registry operator(s) shall nonetheless be included in the calculation in the preceding sentence. [*Note: This Section 7.1(b) is inapplicable to intergovernmental organizations or governmental entities.*]

**7.2 Indemnification Procedures.** If any third-party claim is commenced that is indemnified under Section 7.1 above, ICANN shall provide notice thereof to Registry Operator as promptly as practicable. Registry Operator shall be entitled, if it so elects, in a notice promptly delivered to ICANN, to immediately take control of the defense and investigation of such claim and to employ and engage attorneys reasonably acceptable to ICANN to handle and defend the same, at Registry Operator’s sole cost and expense, provided that in all events ICANN will be entitled to control at its sole cost and expense the litigation of issues concerning the validity or interpretation of ICANN’s policies, Bylaws or conduct. ICANN shall cooperate, at Registry Operator’s cost and expense, in all reasonable respects with Registry Operator and its attorneys in the investigation, trial, and defense of such claim and any appeal arising therefrom, and may, at its own cost and expense, participate, through its attorneys or otherwise, in such investigation, trial and defense of such claim and any appeal arising therefrom. No settlement of a claim that involves a remedy affecting ICANN other than the payment of money in an amount that is fully indemnified by Registry Operator will be entered into without the consent of ICANN. If Registry Operator does not assume full control over the defense of a claim subject to such defense in accordance with this Section 7.2, ICANN will have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of Registry Operator and Registry Operator shall cooperate in such defense. [*Note: This Section 7.2 is inapplicable to intergovernmental organizations or governmental entities.*]

**7.3 Defined Terms.** For purposes of this Agreement, unless such definitions are amended pursuant to a Consensus Policy at a future date, in which case the following definitions shall be deemed amended and restated in their entirety as set forth in such Consensus Policy, Security and Stability shall be defined as follows:

(a) For the purposes of this Agreement, an effect on “Security” shall mean (1) the unauthorized disclosure, alteration, insertion or destruction of registry data, or (2) the unauthorized access to or disclosure of information or resources on the Internet by systems operating in accordance with all applicable standards.

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(b) For purposes of this Agreement, an effect on “Stability” shall refer to (1) lack of compliance with applicable relevant standards that are authoritative and published by a well-established and recognized Internet standards body, such as the relevant Standards-Track or Best Current Practice Requests for Comments (“RFCs”) sponsored by the Internet Engineering Task Force; or (2) the creation of a condition that adversely affects the throughput, response time, consistency or coherence of responses to Internet servers or end systems operating in accordance with applicable relevant standards that are authoritative and published by a well-established and recognized Internet standards body, such as the relevant Standards-Track or Best Current Practice RFCs, and relying on Registry Operator's delegated information or provisioning of services.

**7.4 No Offset.** All payments due under this Agreement will be made in a timely manner throughout the Term and notwithstanding the pendency of any dispute (monetary or otherwise) between Registry Operator and ICANN.

**7.5 Change in Control; Assignment and Subcontracting.** Neither party may assign this Agreement without the prior written approval of the other party, which approval will not be unreasonably withheld. Notwithstanding the foregoing, ICANN may assign this Agreement in conjunction with a reorganization or re-incorporation of ICANN to another nonprofit corporation or similar entity organized in the same legal jurisdiction in which ICANN is currently organized for the same or substantially the same purposes. For purposes of this Section 7.5, a direct or indirect change of control of Registry Operator or any material subcontracting arrangement with respect to the operation of the registry for the TLD shall be deemed an assignment. ICANN shall be deemed to have reasonably withheld its consent to any such a direct or indirect change of control or subcontracting arrangement in the event that ICANN reasonably determines that the person or entity acquiring control of Registry Operator or entering into such subcontracting arrangement (or the ultimate parent entity of such acquiring or subcontracting entity) does not meet the ICANN-adopted registry operator criteria or qualifications then in effect. In addition, without limiting the foregoing, Registry Operator must provide no less than thirty (30) calendar days advance notice to ICANN of any material subcontracting arrangements, and any agreement to subcontract portions of the operations of the TLD must mandate compliance with all covenants, obligations and agreements by Registry Operator hereunder, and Registry Operator shall continue to be bound by such covenants, obligations and agreements. Without limiting the foregoing, Registry Operator must also provide no less than thirty (30) calendar days advance notice to ICANN prior to the consummation of any transaction anticipated to result in a direct or indirect change of control of Registry Operator. Such change of control notification shall include a statement that affirms that the ultimate parent entity of the party acquiring such control meets the ICANN-adopted specification or policy on registry operator criteria then in effect, and affirms that Registry Operator is in compliance with its obligations under this Agreement. Within thirty (30) calendar days of such notification, ICANN may request additional information from Registry Operator establishing compliance with this Agreement, in which case Registry Operator must supply the requested information within fifteen (15) calendar days. If ICANN fails to expressly provide or withhold its consent to any direct or indirect change of control of Registry Operator or any material subcontracting arrangement within thirty (30) (or, if ICANN has requested additional information from Registry Operator as set forth above, sixty (60)) calendar days of the receipt of written notice of such transaction from Registry Operator, ICANN shall be deemed to have consented to such transaction. In connection with any such transaction, Registry Operator shall comply with the Registry Transition Process.

#### **7.6 Amendments and Waivers.**

(a) If ICANN determines that an amendment to this Agreement (including to the Specifications referred to herein) and all other registry agreements between ICANN and the Applicable

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Registry Operators (the “Applicable Registry Agreements”) is desirable (each, a “Special Amendment”), ICANN may submit a Special Amendment for approval by the Applicable Registry Operators pursuant to the process set forth in this Section 7.6, provided that a Special Amendment is not a Restricted Amendment (as defined below). Prior to submitting a Special Amendment for such approval, ICANN shall first consult in good faith with the Working Group (as defined below) regarding the form and substance of a Special Amendment. The duration of such consultation shall be reasonably determined by ICANN based on the substance of the Special Amendment. Following such consultation, ICANN may propose the adoption of a Special Amendment by publicly posting such amendment on its website for no less than thirty (30) calendar days (the “Posting Period”) and providing notice of such amendment by ICANN to the Applicable Registry Operators in accordance with Section 7.8. ICANN will consider the public comments submitted on a Special Amendment during the Posting Period (including comments submitted by the Applicable Registry Operators).

(b) If, within two (2) calendar years of the expiration of the Posting Period (the “Approval Period”), (i) the ICANN Board of Directors approves a Special Amendment (which may be in a form different than submitted for public comment) and (ii) such Special Amendment receives Registry Operator Approval (as defined below), such Special Amendment shall be deemed approved (an “Approved Amendment”) by the Applicable Registry Operators (the last date on which such approvals are obtained is herein referred to as the “Amendment Approval Date”) and shall be effective and deemed an amendment to this Agreement upon sixty (60) calendar days notice from ICANN to Registry Operator (the “Amendment Effective Date”). In the event that a Special Amendment is not approved by the ICANN Board of Directors or does not receive Registry Operator Approval within the Approval Period, the Special Amendment will have no effect. The procedure used by ICANN to obtain Registry Operator Approval shall be designed to document the written approval of the Applicable Registry Operators, which may be in electronic form.

(c) During the thirty (30) calendar day period following the Amendment Approval Date, Registry Operator (so long as it did not vote in favor of the Approved Amendment) may apply in writing to ICANN for an exemption from the Approved Amendment (each such request submitted by Registry Operator hereunder, an “Exemption Request”). Each Exemption Request will set forth the basis for such request and provide detailed support for an exemption from the Approved Amendment. An Exemption Request may also include a detailed description and support for any alternatives to, or a variation of, the Approved Amendment proposed by such Registry Operator. An Exemption Request may only be granted upon a clear and convincing showing by Registry Operator that compliance with the Approved Amendment conflicts with applicable laws or would have a material adverse effect on the long-term financial condition or results of operations of Registry Operator. No Exemption Request will be granted if ICANN determines, in its reasonable discretion, that granting such Exemption Request would be materially harmful to registrants or result in the denial of a direct benefit to registrants. Within ninety (90) calendar days of ICANN’s receipt of an Exemption Request, ICANN shall either approve (which approval may be conditioned or consist of alternatives to or a variation of the Approved Amendment) or deny the Exemption Request in writing, during which time the Approved Amendment will not amend this Agreement; provided, that any such conditions, alternatives or variations shall be effective and, to the extent applicable, will amend this Agreement as of the Amendment Effective Date. If the Exemption Request is approved by ICANN, the Approved Amendment will not amend this Agreement. If such Exemption Request is denied by ICANN, the Approved Amendment will amend this Agreement as of the Amendment Effective Date (or, if such date has passed, such Approved Amendment shall be deemed effective immediately on the date of such denial), provided that Registry Operator may, within thirty (30) calendar days following receipt of ICANN’s determination, appeal ICANN’s decision to deny the Exemption Request pursuant to the dispute resolution procedures set forth in Article 5. The Approved

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Amendment will be deemed not to have amended this Agreement during the pendency of the dispute resolution process. For avoidance of doubt, only Exemption Requests submitted by Registry Operator that are approved by ICANN pursuant to this Section 7.6(c) or through an arbitration decision pursuant to Article 5 shall exempt Registry Operator from any Approved Amendment, and no exemption request granted to any other Applicable Registry Operator (whether by ICANN or through arbitration) shall have any effect under this Agreement or exempt Registry Operator from any Approved Amendment.

(d) Except as set forth in this Section 7.6, no amendment, supplement or modification of this Agreement or any provision hereof shall be binding unless executed in writing by both parties, and nothing in this Section 7.6 shall restrict ICANN and Registry Operator from entering into bilateral amendments and modifications to this Agreement negotiated solely between the two parties. No waiver of any provision of this Agreement shall be binding unless evidenced by a writing signed by the party waiving compliance with such provision. No waiver of any of the provisions of this Agreement or failure to enforce any of the provisions hereof shall be deemed or shall constitute a waiver of any other provision hereof, nor shall any such waiver constitute a continuing waiver unless otherwise expressly provided. For the avoidance of doubt, nothing in this Section 7.6 shall be deemed to limit Registry Operator's obligation to comply with Section 2.2.

(e) For purposes of this Section 7.6, the following terms shall have the following meanings:

(i) "Applicable Registry Operators" means, collectively, the registry operators of the top-level domains party to a registry agreement that contains a provision similar to this Section 7.6, including Registry Operator.

(ii) "Registry Operator Approval" means the receipt of each of the following: (A) the affirmative approval of the Applicable Registry Operators whose payments to ICANN accounted for two-thirds of the total amount of fees (converted to U.S. dollars, if applicable) paid to ICANN by all the Applicable Registry Operators during the immediately previous calendar year pursuant to the Applicable Registry Agreements, and (B) the affirmative approval of a majority of the Applicable Registry Operators at the time such approval is obtained. For avoidance of doubt, with respect to clause (B), each Applicable Registry Operator shall have one vote for each top-level domain operated by such Registry Operator pursuant to an Applicable Registry Agreement.

(iii) "Restricted Amendment" means the following: (i) an amendment of Specification 1, (ii) except to the extent addressed in Section 2.10 hereof, an amendment that specifies the price charged by Registry Operator to registrars for domain name registrations, (iii) an amendment to the definition of Registry Services as set forth in the first paragraph of Section 2.1 of Specification 6, or (iv) an amendment to the length of the Term.

(iv) "Working Group" means representatives of the Applicable Registry Operators and other members of the community that ICANN appoints, from time to time, to serve as a working group to consult on amendments to the Applicable Registry Agreements (excluding bilateral amendments pursuant to Section 7.6(d)).

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**7.7 No Third-Party Beneficiaries.** This Agreement will not be construed to create any obligation by either ICANN or Registry Operator to any non-party to this Agreement, including any registrar or registered name holder.

**7.8 General Notices.** Except for notices pursuant to Section 7.6, all notices to be given under or in relation to this Agreement will be given either (i) in writing at the address of the appropriate party as set forth below or (ii) via facsimile or electronic mail as provided below, unless that party has given a notice of change of postal or email address, or facsimile number, as provided in this agreement. All notices under Section 7.6 shall be given by both posting of the applicable information on ICANN's web site and transmission of such information to Registry Operator by electronic mail. Any change in the contact information for notice below will be given by the party within thirty (30) calendar days of such change. Notices, designations, determinations, and specifications made under this Agreement will be in the English language. Other than notices under Section 7.6, any notice required by this Agreement will be deemed to have been properly given (i) if in paper form, when delivered in person or via courier service with confirmation of receipt or (ii) if via facsimile or by electronic mail, upon confirmation of receipt by the recipient's facsimile machine or email server, provided that such notice via facsimile or electronic mail shall be followed by a copy sent by regular postal mail service within two (2) business days. Any notice required by Section 7.6 will be deemed to have been given when electronically posted on ICANN's website and upon confirmation of receipt by the email server. In the event other means of notice become practically achievable, such as notice via a secure website, the parties will work together to implement such notice means under this Agreement.

If to ICANN, addressed to:  
 Internet Corporation for Assigned Names and Numbers  
 4676 Admiralty Way, Suite 330  
 Marina Del Rey, California 90292  
 Telephone: 1-310-823-9358  
 Facsimile: 1-310-823-8649  
 Attention: President and CEO

With a Required Copy to: General Counsel  
 Email: (As specified from time to time.)

If to Registry Operator, addressed to:

[\_\_\_\_\_]

[\_\_\_\_\_]

[\_\_\_\_\_]

Telephone:

Facsimile:

Attention:

With a Required Copy to:  
 Email: (As specified from time to time.)

**7.9 Entire Agreement.** This Agreement (including those specifications and documents incorporated by reference to URL locations which form a part of it) constitutes the entire agreement of the parties hereto pertaining to the operation of the TLD and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, between the parties on that subject.

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**7.10 English Language Controls.** Notwithstanding any translated version of this Agreement and/or specifications that may be provided to Registry Operator, the English language version of this Agreement and all referenced specifications are the official versions that bind the parties hereto. In the event of any conflict or discrepancy between any translated version of this Agreement and the English language version, the English language version controls. Notices, designations, determinations, and specifications made under this Agreement shall be in the English language.

**7.11 Ownership Rights.** Nothing contained in this Agreement shall be construed as establishing or granting to Registry Operator any property ownership rights or interests in the TLD or the letters, words, symbols or other characters making up the TLD string.

**7.12 Severability.** This Agreement shall be deemed severable; the invalidity or unenforceability of any term or provision of this Agreement shall not affect the validity or enforceability of the balance of this Agreement or of any other term hereof, which shall remain in full force and effect. If any of the provisions hereof are determined to be invalid or unenforceable, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible.

**7.13 Court Orders.** ICANN will respect any order from a court of competent jurisdiction, including any orders from any jurisdiction where the consent or non-objection of the government was a requirement for the delegation of the TLD. Notwithstanding any other provision of this Agreement, ICANN's implementation of any such order will not be a breach of this Agreement.

*[Note: The following section is applicable to intergovernmental organizations or governmental entities only.]*

**7.14 Special Provision Relating to Intergovernmental Organizations or Governmental Entities.**

(a) ICANN acknowledges that Registry Operator is an entity subject to public international law, including international treaties applicable to Registry Operator (such public international law and treaties, collectively hereinafter the "Applicable Laws"). Nothing in this Agreement and its related specifications shall be construed or interpreted to require Registry Operator to violate Applicable Laws or prevent compliance therewith. The Parties agree that Registry Operator's compliance with Applicable Laws shall not constitute a breach of this Agreement.

(b) In the event Registry Operator reasonably determines that any provision of this Agreement and its related specifications, or any decisions or policies of ICANN referred to in this Agreement, including but not limited to Temporary Policies and Consensus Policies (such provisions, specifications and policies, collectively hereinafter, "ICANN Requirements"), may conflict with or violate Applicable Law (hereinafter, a "Potential Conflict"), Registry Operator shall provide detailed notice (a "Notice") of such Potential Conflict to ICANN as early as possible and, in the case of a Potential Conflict with a proposed Consensus Policy, no later than the end of any public comment period on such proposed Consensus Policy. In the event Registry Operator determines that there is Potential Conflict between a proposed Applicable Law and any ICANN Requirement, Registry Operator shall provide detailed Notice of such Potential Conflict to ICANN as early as possible and, in the case of a Potential Conflict with a proposed Consensus Policy, no later than the end of any public comment period on such proposed Consensus Policy.

(c) As soon as practicable following such review, the parties shall attempt to resolve the Potential Conflict by cooperative engagement pursuant to the procedures set forth in Section 5.1. In

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addition, Registry Operator shall use its best efforts to eliminate or minimize any impact arising from such Potential Conflict between Applicable Laws and any ICANN Requirement. If, following such cooperative engagement, Registry Operator determines that the Potential Conflict constitutes an actual conflict between any ICANN Requirement, on the one hand, and Applicable Laws, on the other hand, then ICANN shall waive compliance with such ICANN Requirement (provided that the parties shall negotiate in good faith on a continuous basis thereafter to mitigate or eliminate the effects of such non-compliance on ICANN), unless ICANN reasonably and objectively determines that the failure of Registry Operator to comply with such ICANN Requirement would constitute a threat to the Security and Stability of Registry Services, the Internet or the DNS (hereinafter, an “ICANN Determination”). Following receipt of notice by Registry Operator of such ICANN Determination, Registry Operator shall be afforded a period of ninety (90) calendar days to resolve such conflict with an Applicable Law. If the conflict with an Applicable Law is not resolved to ICANN’s complete satisfaction during such period, Registry Operator shall have the option to submit, within ten (10) calendar days thereafter, the matter to binding arbitration as defined in subsection (d) below. If during such period, Registry Operator does not submit the matter to arbitration pursuant to subsection (d) below, ICANN may, upon notice to Registry Operator, terminate this Agreement with immediate effect.

(d) If Registry Operator disagrees with an ICANN Determination, Registry Operator may submit the matter to binding arbitration pursuant to the provisions of Section 5.2, except that the sole issue presented to the arbitrator for determination will be whether or not ICANN reasonably and objectively reached the ICANN Determination. For the purposes of such arbitration, ICANN shall present evidence to the arbitrator supporting the ICANN Determination. If the arbitrator determines that ICANN did not reasonably and objectively reach the ICANN Determination, then ICANN shall waive Registry Operator’s compliance with the subject ICANN Requirement. If the arbitrators or pre-arbitral referee, as applicable, determine that ICANN did reasonably and objectively reach the ICANN Determination, then, upon notice to Registry Operator, ICANN may terminate this Agreement with immediate effect.

(e) Registry Operator hereby represents and warrants that, to the best of its knowledge as of the date of execution of this Agreement, no existing ICANN Requirement conflicts with or violates any Applicable Law.

(f) Notwithstanding any other provision of this Section 7.14, following an ICANN Determination and prior to a finding by an arbitrator pursuant to Section 7.14(d) above, ICANN may, subject to prior consultations with Registry Operator, take such reasonable technical measures as it deems necessary to ensure the Security and Stability of Registry Services, the Internet and the DNS. These reasonable technical measures shall be taken by ICANN on an interim basis, until the earlier of the date of conclusion of the arbitration procedure referred to in Section 7.14(d) above or the date of complete resolution of the conflict with an Applicable Law. In case Registry Operator disagrees with such technical measures taken by ICANN, Registry Operator may submit the matter to binding arbitration pursuant to the provisions of Section 5.2 above, during which process ICANN may continue to take such technical measures. In the event that ICANN takes such measures, Registry Operator shall pay all costs incurred by ICANN as a result of taking such measures. In addition, in the event that ICANN takes such measures, ICANN shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable.

\* \* \* \* \*

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

**INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS**

By: \_\_\_\_\_  
[\_\_\_\_\_] President and CEO

Date:

**[Registry Operator]**

By: \_\_\_\_\_  
[\_\_\_\_\_] \_\_\_\_\_  
[\_\_\_\_\_]

Date:

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**EXHIBIT A**

**Approved Services**

## SPECIFICATION 1

### CONSENSUS POLICIES AND TEMPORARY POLICIES SPECIFICATION

#### 1. Consensus Policies.

- 1.1. “*Consensus Policies*” are those policies established (1) pursuant to the procedure set forth in ICANN's Bylaws and due process, and (2) covering those topics listed in Section 1.2 of this document. The Consensus Policy development process and procedure set forth in ICANN's Bylaws may be revised from time to time in accordance with the process set forth therein.
- 1.2. Consensus Policies and the procedures by which they are developed shall be designed to produce, to the extent possible, a consensus of Internet stakeholders, including the operators of gTLDs. Consensus Policies shall relate to one or more of the following:
  - 1.2.1. issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, security and/or stability of the Internet or Domain Name System (“DNS”);
  - 1.2.2. functional and performance specifications for the provision of Registry Services;
  - 1.2.3. Security and Stability of the registry database for the TLD;
  - 1.2.4. registry policies reasonably necessary to implement Consensus Policies relating to registry operations or registrars;
  - 1.2.5. resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names); or
  - 1.2.6. restrictions on cross-ownership of registry operators and registrars or registrar resellers and regulations and restrictions with respect to registry operations and the use of registry and registrar data in the event that a registry operator and a registrar or registrar reseller are affiliated.
- 1.3. Such categories of issues referred to in Section 1.2 shall include, without limitation:
  - 1.3.1. principles for allocation of registered names in the TLD (e.g., first-come/first-served, timely renewal, holding period after expiration);
  - 1.3.2. prohibitions on warehousing of or speculation in domain names by registries or registrars;
  - 1.3.3. reservation of registered names in the TLD that may not be registered initially or that may not be renewed due to reasons reasonably related to (i) avoidance of confusion among or misleading of users, (ii) intellectual property, or (iii) the technical management of the DNS or the Internet (e.g., establishment of reservations of names from registration); and
  - 1.3.4. maintenance of and access to accurate and up-to-date information concerning domain name registrations; and procedures to avoid disruptions of domain name registrations due to suspension or termination of operations by a registry operator or a registrar, including procedures for allocation of responsibility for serving registered domain names in a TLD affected by such a suspension or termination.
- 1.4. In addition to the other limitations on Consensus Policies, they shall not:

- 1.4.1. prescribe or limit the price of Registry Services;
  - 1.4.2. modify the terms or conditions for the renewal or termination of the Registry Agreement;
  - 1.4.3. modify the limitations on Temporary Policies (defined below) or Consensus Policies;
  - 1.4.4. modify the provisions in the registry agreement regarding fees paid by Registry Operator to ICANN; or
  - 1.4.5. modify ICANN's obligations to ensure equitable treatment of registry operators and act in an open and transparent manner.
2. **Temporary Policies.** Registry Operator shall comply with and implement all specifications or policies established by the Board on a temporary basis, if adopted by the Board by a vote of at least two-thirds of its members, so long as the Board reasonably determines that such modifications or amendments are justified and that immediate temporary establishment of a specification or policy on the subject is necessary to maintain the stability or security of Registry Services or the DNS ("*Temporary Policies*").
- 2.1. Such proposed specification or policy shall be as narrowly tailored as feasible to achieve those objectives. In establishing any Temporary Policy, the Board shall state the period of time for which the Temporary Policy is adopted and shall immediately implement the Consensus Policy development process set forth in ICANN's Bylaws.
    - 2.1.1. ICANN shall also issue an advisory statement containing a detailed explanation of its reasons for adopting the Temporary Policy and why the Board believes such Temporary Policy should receive the consensus support of Internet stakeholders.
    - 2.1.2. If the period of time for which the Temporary Policy is adopted exceeds 90 days, the Board shall reaffirm its temporary adoption every 90 days for a total period not to exceed one year, in order to maintain such Temporary Policy in effect until such time as it becomes a Consensus Policy. If the one year period expires or, if during such one year period, the Temporary Policy does not become a Consensus Policy and is not reaffirmed by the Board, Registry Operator shall no longer be required to comply with or implement such Temporary Policy.
3. **Notice and Conflicts.** Registry Operator shall be afforded a reasonable period of time following notice of the establishment of a Consensus Policy or Temporary Policy in which to comply with such policy or specification, taking into account any urgency involved. In the event of a conflict between Registry Services and Consensus Policies or any Temporary Policy, the Consensus Policies or Temporary Policy shall control, but only with respect to subject matter in conflict.

## SPECIFICATION 2 DATA ESCROW REQUIREMENTS

Registry Operator will engage an independent entity to act as data escrow agent (“*Escrow Agent*”) for the provision of data escrow services related to the Registry Agreement. The following Technical Specifications set forth in Part A, and Legal Requirements set forth in Part B, will be included in any data escrow agreement between Registry Operator and the Escrow Agent, under which ICANN must be named a third-party beneficiary. In addition to the following requirements, the data escrow agreement may contain other provisions that are not contradictory or intended to subvert the required terms provided below.

### PART A – TECHNICAL SPECIFICATIONS

1. **Deposits.** There will be two types of Deposits: Full and Differential. For both types, the universe of Registry objects to be considered for data escrow are those objects necessary in order to offer all of the approved Registry Services.
  - 1.1 “**Full Deposit**” will consist of data that reflects the state of the registry as of 00:00:00 UTC on each Sunday. Pending transactions at that time (i.e., transactions that have not been committed) will not be reflected in the Full Deposit.
  - 1.2 “**Differential Deposit**” means data that reflects all transactions that were not reflected in the last previous Full or Differential Deposit, as the case may be. Each Differential Deposit will contain all database transactions since the previous Deposit was completed as of 00:00:00 UTC of each day, but Sunday. Differential Deposits must include complete Escrow Records as specified below that were not included or changed since the most recent full or Differential Deposit (i.e., newly added or modified domain names).
2. **Schedule for Deposits.** Registry Operator will submit a set of escrow files on a daily basis as follows:
  - 2.1 Each Sunday, a Full Deposit must be submitted to the Escrow Agent by 23:59 UTC.
  - 2.2 The other six days of the week, the corresponding Differential Deposit must be submitted to Escrow Agent by 23:59 UTC.
3. **Escrow Format Specification.**
  - 3.1 **Deposit’s Format.** Registry objects, such as domains, contacts, name servers, registrars, etc. will be compiled into a file constructed as described in draft-arias-noguchi-registry-data-escrow, see [1]. The aforementioned document describes some elements as optional; Registry Operator will include those elements in the Deposits if they are available. Registry Operator will use the draft version available at the time of signing the Agreement, if not already an RFC. Once the specification is published as an RFC, Registry Operator will implement that specification, no later than 180 days after. UTF-8 character encoding will be used.
  - 3.2 **Extensions.** If a Registry Operator offers additional Registry Services that require submission of additional data, not included above, additional “extension schemas” shall be defined in a case by case base to represent that data. These “extension schemas” will be specified as described in [1]. Data related to the “extensions schemas” will be included in the deposit file described in section

3.1. ICANN and the respective Registry shall work together to agree on such new objects' data escrow specifications.

4. **Processing of Deposit files.** The use of compression is recommended in order to reduce electronic data transfer times, and storage capacity requirements. Data encryption will be used to ensure the privacy of registry escrow data. Files processed for compression and encryption will be in the binary OpenPGP format as per OpenPGP Message Format - RFC 4880, see [2]. Acceptable algorithms for Public-key cryptography, Symmetric-key cryptography, Hash and Compression are those enumerated in RFC 4880, not marked as deprecated in OpenPGP IANA Registry, see [3], that are also royalty-free. The process to follow for a data file in original text format is:
- (1) The file should be compressed. The suggested algorithm for compression is ZIP as per RFC 4880.
  - (2) The compressed data will be encrypted using the escrow agent's public key. The suggested algorithms for Public-key encryption are Elgamal and RSA as per RFC 4880. The suggested algorithms for Symmetric-key encryption are TripleDES, AES128 and CAST5 as per RFC 4880.
  - (3) The file may be split as necessary if, once compressed and encrypted is larger than the file size limit agreed with the escrow agent. Every part of a split file, or the whole file if split is not used, will be called a processed file in this section.
  - (4) A digital signature file will be generated for every processed file using the Registry's private key. The digital signature file will be in binary OpenPGP format as per RFC 4880 [2], and will not be compressed or encrypted. The suggested algorithms for Digital signatures are DSA and RSA as per RFC 4880. The suggested algorithm for Hashes in Digital signatures is SHA256.
  - (5) The processed files and digital signature files will then be transferred to the Escrow Agent through secure electronic mechanisms, such as, SFTP, SCP, HTTPS file upload, etc. as agreed between the Escrow Agent and the Registry Operator. Non-electronic delivery through a physical medium such as CD-ROMs, DVD-ROMs, or USB storage devices may be used if authorized by ICANN.
  - (6) The Escrow Agent will then validate every (processed) transferred data file using the procedure described in section 8.
5. **File Naming Conventions.** Files will be named according to the following convention: {gTLD}\_{YYYY-MM-DD}\_{type}\_S{#}\_R{rev}.{ext} where:
- 5.1 {gTLD} is replaced with the gTLD name; in case of an IDN-TLD, the ASCII-compatible form (A-Label) must be used;
  - 5.2 {YYYY-MM-DD} is replaced by the date corresponding to the time used as a timeline watermark for the transactions; i.e. for the Full Deposit corresponding to 2009-08-02T00:00Z, the string to be used would be "2009-08-02";
  - 5.3 {type} is replaced by:
    - (1) "full", if the data represents a Full Deposit;
    - (2) "diff", if the data represents a Differential Deposit;
    - (3) "thin", if the data represents a Bulk Registration Data Access file, as specified in section 3 of Specification 4;
  - 5.4 {#} is replaced by the position of the file in a series of files, beginning with "1"; in case of a lone file, this must be replaced by "1".
  - 5.5 {rev} is replaced by the number of revision (or resend) of the file beginning with "0":

- 5.6 {ext} is replaced by “sig” if it is a digital signature file of the quasi-homonymous file. Otherwise it is replaced by “ryde”.
6. **Distribution of Public Keys.** Each of Registry Operator and Escrow Agent will distribute its public key to the other party (Registry Operator or Escrow Agent, as the case may be) via email to an email address to be specified. Each party will confirm receipt of the other party's public key with a reply email, and the distributing party will subsequently reconfirm the authenticity of the key transmitted via offline methods, like in person meeting, telephone, etc. In this way, public key transmission is authenticated to a user able to send and receive mail via a mail server operated by the distributing party. Escrow Agent, Registry and ICANN will exchange keys by the same procedure.
7. **Notification of Deposits.** Along with the delivery of each Deposit, Registry Operator will deliver to Escrow Agent and to ICANN a written statement (which may be by authenticated e-mail) that includes a copy of the report generated upon creation of the Deposit and states that the Deposit has been inspected by Registry Operator and is complete and accurate. Registry Operator will include the Deposit's "id" and "resend" attributes in its statement. The attributes are explained in [1].
8. **Verification Procedure.**
- (1) The signature file of each processed file is validated.
  - (2) If processed files are pieces of a bigger file, the latter is put together.
  - (3) Each file obtained in the previous step is then decrypted and uncompressed.
  - (4) Each data file contained in the previous step is then validated against the format defined in [1].
  - (5) If [1] includes a verification process, that will be applied at this step.  
If any discrepancy is found in any of the steps, the Deposit will be considered incomplete.
9. **References.**
- [1] Domain Name Data Escrow Specification (work in progress), <http://tools.ietf.org/html/draft-arias-noguchi-registry-data-escrow>
- [2] OpenPGP Message Format, <http://www.rfc-editor.org/rfc/rfc4880.txt>
- [3] OpenPGP parameters, <http://www.iana.org/assignments/pgp-parameters/pgp-parameters.xhtml>

## PART B – LEGAL REQUIREMENTS

1. **Escrow Agent.** Prior to entering into an escrow agreement, the Registry Operator must provide notice to ICANN as to the identity of the Escrow Agent, and provide ICANN with contact information and a copy of the relevant escrow agreement, and all amendment thereto. In addition, prior to entering into an escrow agreement, Registry Operator must obtain the consent of ICANN to (a) use the specified Escrow Agent, and (b) enter into the form of escrow agreement provided. ICANN must be expressly designated a third-party beneficiary of the escrow agreement. ICANN reserves the right to withhold its consent to any Escrow Agent, escrow agreement, or any amendment thereto, all in its sole discretion.
2. **Fees.** Registry Operator must pay, or have paid on its behalf, fees to the Escrow Agent directly. If Registry Operator fails to pay any fee by the due date(s), the Escrow Agent will give ICANN written notice of such non-payment and ICANN may pay the past-due fee(s) within ten business days after receipt of the written notice from Escrow Agent. Upon payment of the past-due fees by ICANN, ICANN shall have a claim for such amount against Registry Operator, which Registry Operator shall be required to submit to ICANN together with the next fee payment due under the Registry Agreement.
3. **Ownership.** Ownership of the Deposits during the effective term of the Registry Agreement shall remain with Registry Operator at all times. Thereafter, Registry Operator shall assign any such ownership rights (including intellectual property rights, as the case may be) in such Deposits to ICANN. In the event that during the term of the Registry Agreement any Deposit is released from escrow to ICANN, any intellectual property rights held by Registry Operator in the Deposits will automatically be licensed on a non-exclusive, perpetual, irrevocable, royalty-free, paid-up basis to ICANN or to a party designated in writing by ICANN.
4. **Integrity and Confidentiality.** Escrow Agent will be required to (i) hold and maintain the Deposits in a secure, locked, and environmentally safe facility, which is accessible only to authorized representatives of Escrow Agent, (ii) protect the integrity and confidentiality of the Deposits using commercially reasonable measures and (iii) keep and safeguard each Deposit for one year. ICANN and Registry Operator will be provided the right to inspect Escrow Agent's applicable records upon reasonable prior notice and during normal business hours. Registry Operator and ICANN will be provided with the right to designate a third-party auditor to audit Escrow Agent's compliance with the technical specifications and maintenance requirements of this Specification 2 from time to time.

If Escrow Agent receives a subpoena or any other order from a court or other judicial tribunal pertaining to the disclosure or release of the Deposits, Escrow Agent will promptly notify the Registry Operator and ICANN unless prohibited by law. After notifying the Registry Operator and ICANN, Escrow Agent shall allow sufficient time for Registry Operator or ICANN to challenge any such order, which shall be the responsibility of Registry Operator or ICANN; provided, however, that Escrow Agent does not waive its rights to present its position with respect to any such order. Escrow Agent will cooperate with the Registry Operator or ICANN to support efforts to quash or limit any subpoena, at such party's expense. Any party requesting additional assistance shall pay Escrow Agent's standard charges or as quoted upon submission of a detailed request.

5. **Copies.** Escrow Agent may be permitted to duplicate any Deposit, in order to comply with the terms and provisions of the escrow agreement.
  
6. **Release of Deposits.** Escrow Agent will make available for electronic download (unless otherwise requested) to ICANN or its designee, within twenty-four hours, at the Registry Operator's expense, all Deposits in Escrow Agent's possession in the event that the Escrow Agent receives a request from Registry Operator to effect such delivery to ICANN, or receives one of the following written notices by ICANN stating that:
  - 6.1 the Registry Agreement has expired without renewal, or been terminated; or
  - 6.2 ICANN failed, with respect to (a) any Full Deposit or (b) five Differential Deposits within any calendar month, to receive, within five calendar days after the Deposit's scheduled delivery date, notification of receipt from Escrow Agent; (x) ICANN gave notice to Escrow Agent and Registry Operator of that failure; and (y) ICANN has not, within seven calendar days after such notice, received notice from Escrow Agent that the Deposit has been received; or
  - 6.3 ICANN has received notification from Escrow Agent of failed verification of a Full Deposit or of failed verification of five Differential Deposits within any calendar month and (a) ICANN gave notice to Registry Operator of that receipt; and (b) ICANN has not, within seven calendar days after such notice, received notice from Escrow Agent of verification of a remediated version of such Full Deposit or Differential Deposit; or
  - 6.4 Registry Operator has: (i) ceased to conduct its business in the ordinary course; or (ii) filed for bankruptcy, become insolvent or anything analogous to any of the foregoing under the laws of any jurisdiction anywhere in the world; or
  - 6.5 Registry Operator has experienced a failure of critical registry functions and ICANN has asserted its rights pursuant to Section 2.13 of the Registry Agreement; or
  - 6.6 a competent court, arbitral, legislative, or government agency mandates the release of the Deposits to ICANN.

Unless Escrow Agent has previously released the Registry Operator's Deposits to ICANN or its designee, Escrow Agent will deliver all Deposits to ICANN upon termination of the Registry Agreement or the Escrow Agreement.

7. **Verification of Deposits.**
  - 7.1 Within twenty-four hours after receiving each Deposit or corrected Deposit, Escrow Agent must verify the format and completeness of each Deposit and deliver to ICANN a copy of the verification report generated for each Deposit. Reports will be delivered electronically, as specified from time to time by ICANN.
  - 7.2 If Escrow Agent discovers that any Deposit fails the verification procedures, Escrow Agent must notify, either by email, fax or phone, Registry Operator and ICANN of such nonconformity within twenty-four hours after receiving the non-conformant Deposit. Upon notification of such verification failure, Registry Operator must begin developing modifications, updates, corrections, and other fixes of the Deposit necessary for the Deposit to pass the verification procedures and deliver such fixes to Escrow Agent as promptly as possible.
  
8. **Amendments.** Escrow Agent and Registry Operator shall amend the terms of the Escrow Agreement to conform to this Specification 2 within ten (10) calendar days of any amendment or modification to this Specification 2. In the event of a conflict between this Specification 2 and the Escrow Agreement, this Specification 2 shall control.
  
9. **Indemnity.** Registry Operator shall indemnify and hold harmless Escrow Agent and each of its directors, officers, agents, employees, members, and stockholders ("Escrow Agent Indemnitees")

absolutely and forever from and against any and all claims, actions, damages, suits, liabilities, obligations, costs, fees, charges, and any other expenses whatsoever, including reasonable attorneys' fees and costs, that may be asserted by a third party against any Escrow Agent Indemnitees in connection with the Escrow Agreement or the performance of Escrow Agent or any Escrow Agent Indemnitees thereunder (with the exception of any claims based on the misrepresentation, negligence, or misconduct of Escrow Agent, its directors, officers, agents, employees, contractors, members, and stockholders). Escrow Agent shall indemnify and hold harmless Registry Operator and ICANN, and each of their respective directors, officers, agents, employees, members, and stockholders ("Indemnitees") absolutely and forever from and against any and all claims, actions, damages, suits, liabilities, obligations, costs, fees, charges, and any other expenses whatsoever, including reasonable attorneys' fees and costs, that may be asserted by a third party against any Indemnitee in connection with the misrepresentation, negligence or misconduct of Escrow Agent, its directors, officers, agents, employees and contractors.

## SPECIFICATION 3

### FORMAT AND CONTENT FOR REGISTRY OPERATOR MONTHLY REPORTING

Registry Operator shall provide one set of monthly reports per gTLD to \_\_\_\_\_ with the following content. ICANN may request in the future that the reports be delivered by other means and using other formats. ICANN will use reasonable commercial efforts to preserve the confidentiality of the information reported until three months after the end of the month to which the reports relate.

**1. Per-Registrar Transactions Report.** This report shall be compiled in a comma separated-value formatted file as specified in RFC 4180. The file shall be named “gTLD-transactions-yyyymm.csv”, where “gTLD” is the gTLD name; in case of an IDN-TLD, the A-label shall be used; “yyyymm” is the year and month being reported. The file shall contain the following fields per registrar:

Field #	Field Name	Description
01	registrar-name	registrar's full corporate name as registered with IANA
02	iana-id	<a href="http://www.iana.org/assignments/registrar-ids">http://www.iana.org/assignments/registrar-ids</a>
03	total-domains	total domains under sponsorship
04	total-nameservers	total name servers registered for TLD
05	net-adds-1-yr	number of domains successfully registered with an initial term of one year (and not deleted within the add grace period)
06	net-adds-2-yr	number of domains successfully registered with an initial term of two years (and not deleted within the add grace period)
07	net-adds-3-yr	number of domains successfully registered with an initial term of three years (and not deleted within the add grace period)
08	net-adds-4-yr	number of domains successfully registered with an initial term of four years (and not deleted within the add grace period)
09	net-adds-5-yr	number of domains successfully registered with an initial term of five years (and not deleted within the add grace period)
10	net-adds-6-yr	number of domains successfully registered with an initial term of six years (and not deleted within the add grace period)
11	net-adds-7-yr	number of domains successfully registered with an initial term of seven years (and not deleted within the add grace period)

12	net-adds-8-yr	number of domains successfully registered with an initial term of eight years (and not deleted within the add grace period)
13	net-adds-9-yr	number of domains successfully registered with an initial term of nine years (and not deleted within the add grace period)
14	net-adds-10-yr	number of domains successfully registered with an initial term of ten years (and not deleted within the add grace period)
15	net-renews-1-yr	number of domains successfully renewed either automatically or by command with a new renewal period of one year (and not deleted within the renew grace period)
16	net-renews-2-yr	number of domains successfully renewed either automatically or by command with a new renewal period of two years (and not deleted within the renew grace period)
17	net-renews-3-yr	number of domains successfully renewed either automatically or by command with a new renewal period of three years (and not deleted within the renew grace period)
18	net-renews-4-yr	number of domains successfully renewed either automatically or by command with a new renewal period of four years (and not deleted within the renew grace period)
19	net-renews-5-yr	number of domains successfully renewed either automatically or by command with a new renewal period of five years (and not deleted within the renew grace period)
20	net-renews-6-yr	number of domains successfully renewed either automatically or by command with a new renewal period of six years (and not deleted within the renew grace period)
21	net-renews-7-yr	number of domains successfully renewed either automatically or by command with a new renewal period of seven years (and not deleted within the renew grace period)
22	net-renews-8-yr	number of domains successfully renewed either automatically or by command with a new renewal period of eight years (and not deleted within the renew grace period)
23	net-renews-9-yr	number of domains successfully renewed either

		automatically or by command with a new renewal period of nine years (and not deleted within the renew grace period)
24	net-renews-10-yr	number of domains successfully renewed either automatically or by command with a new renewal period of ten years (and not deleted within the renew grace period)
25	transfer-gaining-successful	transfers initiated by this registrar that were ack'd by the other registrar – either by command or automatically
26	transfer-gaining-nacked	transfers initiated by this registrar that were n'acked by the other registrar
27	transfer-losing-successful	transfers initiated by another registrar that this registrar ack'd – either by command or automatically
28	transfer-losing-nacked	transfers initiated by another registrar that this registrar n'acked
29	transfer-disputed-won	number of transfer disputes in which this registrar prevailed
30	transfer-disputed-lost	number of transfer disputes this registrar lost
31	transfer-disputed-noddecision	number of transfer disputes involving this registrar with a split or no decision
32	deleted-domains-grace	domains deleted within the add grace period
33	deleted-domains-nograce	domains deleted outside the add grace period
34	restored-domains	domain names restored from redemption period
35	restored-noreport	total number of restored names for which the registrar failed to submit a restore report
36	agp-exemption-requests	total number of AGP (add grace period) exemption requests
37	agp-exemptions-granted	total number of AGP (add grace period) exemption requests granted
38	agp-exempted-domains	total number of names affected by granted AGP (add grace period) exemption requests
39	attempted-adds	number of attempted (successful and failed) domain name create commands

The first line shall include the field names exactly as described in the table above as a “header line” as described in section 2 of RFC 4180. The last line of each report shall include totals for each column across all registrars; the first field of this line shall read “Totals” while the second field shall be left empty in that line. No other lines besides the ones described above shall be included. Line breaks shall be <U+000D, U+000A> as described in RFC 4180.

**2. Registry Functions Activity Report.** This report shall be compiled in a comma separated-value formatted file as specified in RFC 4180. The file shall be named “gTLD-activity-yyyymm.csv”, where “gTLD” is the gTLD name; in case of an IDN-TLD, the A-label shall be used; “yyyymm” is the year and month being reported. The file shall contain the following fields:

Field #	Field Name	Description
01	operational-registrars	number of operational registrars at the end of the reporting period
02	ramp-up-registrars	number of registrars that have received a password for access to OT&E at the end of the reporting period
03	pre-ramp-up-registrars	number of registrars that have requested access, but have not yet entered the ramp-up period at the end of the reporting period
04	zfa-passwords	number of active zone file access passwords at the end of the reporting period
05	whois-43-queries	number of WHOIS (port-43) queries responded during the reporting period
06	web-whois-queries	number of Web-based Whois queries responded during the reporting period, not including searchable Whois
07	searchable-whois-queries	number of searchable Whois queries responded during the reporting period, if offered
08	dns-udp-queries-received	number of DNS queries received over UDP transport during the reporting period
09	dns-udp-queries-responded	number of DNS queries received over UDP transport that were responded during the reporting period
10	dns-tcp-queries-received	number of DNS queries received over TCP transport during the reporting period
11	dns-tcp-queries-responded	number of DNS queries received over TCP transport that were responded during the reporting period
12	srs-dom-check	number of SRS (EPP and any other interface) domain name “check” requests responded during the reporting period
13	srs-dom-create	number of SRS (EPP and any other interface) domain name “create” requests responded during the reporting period
14	srs-dom-delete	number of SRS (EPP and any other interface) domain name “delete” requests responded during the reporting period
15	srs-dom-info	number of SRS (EPP and any other interface) domain name “info” requests responded during the reporting period
16	srs-dom-renew	number of SRS (EPP and any other interface) domain name

		“renew” requests responded during the reporting period
17	srs-dom-rgp-restore-report	number of SRS (EPP and any other interface) domain name RGP “restore” requests responded during the reporting period
18	srs-dom-rgp-restore-request	number of SRS (EPP and any other interface) domain name RGP “restore” requests delivering a restore report responded during the reporting period
19	srs-dom-transfer-approve	number of SRS (EPP and any other interface) domain name “transfer” requests to approve transfers responded during the reporting period
20	srs-dom-transfer-cancel	number of SRS (EPP and any other interface) domain name “transfer” requests to cancel transfers responded during the reporting period
21	srs-dom-transfer-query	number of SRS (EPP and any other interface) domain name “transfer” requests to query about a transfer responded during the reporting period
22	srs-dom-transfer-reject	number of SRS (EPP and any other interface) domain name “transfer” requests to reject transfers responded during the reporting period
23	srs-dom-transfer-request	number of SRS (EPP and any other interface) domain name “transfer” requests to request transfers responded during the reporting period
24	srs-dom-update	number of SRS (EPP and any other interface) domain name “update” requests (not including RGP restore requests) responded during the reporting period
25	srs-host-check	number of SRS (EPP and any other interface) host “check” requests responded during the reporting period
26	srs-host-create	number of SRS (EPP and any other interface) host “create” requests responded during the reporting period
27	srs-host-delete	number of SRS (EPP and any other interface) host “delete” requests responded during the reporting period
28	srs-host-info	number of SRS (EPP and any other interface) host “info” requests responded during the reporting period
29	srs-host-update	number of SRS (EPP and any other interface) host “update” requests responded during the reporting period
30	srs-cont-check	number of SRS (EPP and any other interface) contact “check” requests responded during the reporting period
31	srs-cont-create	number of SRS (EPP and any other interface) contact “create” requests responded during the reporting period

32	srs-cont-delete	number of SRS (EPP and any other interface) contact “delete” requests responded during the reporting period
33	srs-cont-info	number of SRS (EPP and any other interface) contact “info” requests responded during the reporting period
34	srs-cont-transfer-approve	number of SRS (EPP and any other interface) contact “transfer” requests to approve transfers responded during the reporting period
35	srs-cont-transfer-cancel	number of SRS (EPP and any other interface) contact “transfer” requests to cancel transfers responded during the reporting period
36	srs-cont-transfer-query	number of SRS (EPP and any other interface) contact “transfer” requests to query about a transfer responded during the reporting period
37	srs-cont-transfer-reject	number of SRS (EPP and any other interface) contact “transfer” requests to reject transfers responded during the reporting period
38	srs-cont-transfer-request	number of SRS (EPP and any other interface) contact “transfer” requests to request transfers responded during the reporting period
39	srs-cont-update	number of SRS (EPP and any other interface) contact “update” requests responded during the reporting period

The first line shall include the field names exactly as described in the table above as a “header line” as described in section 2 of RFC 4180. The last line of each report shall include totals for each column across all registrars; the first field of this line shall read “Totals” while the second field shall be left empty in that line. No other lines besides the ones described above shall be included. Line breaks shall be <U+000D, U+000A> as described in RFC 4180.

## SPECIFICATION 4

### SPECIFICATION FOR REGISTRATION DATA PUBLICATION SERVICES

1. **Registration Data Directory Services.** Until ICANN requires a different protocol, Registry Operator will operate a WHOIS service available via port 43 in accordance with RFC 3912, and a web-based Directory Service at <whois.nic.TLD> providing free public query-based access to at least the following elements in the following format. ICANN reserves the right to specify alternative formats and protocols, and upon such specification, the Registry Operator will implement such alternative specification as soon as reasonably practicable.

1.1. The format of responses shall follow a semi-free text format outline below, followed by a blank line and a legal disclaimer specifying the rights of Registry Operator, and of the user querying the database.

1.2. Each data object shall be represented as a set of key/value pairs, with lines beginning with keys, followed by a colon and a space as delimiters, followed by the value.

1.3. For fields where more than one value exists, multiple key/value pairs with the same key shall be allowed (for example to list multiple name servers). The first key/value pair after a blank line should be considered the start of a new record, and should be considered as identifying that record, and is used to group data, such as hostnames and IP addresses, or a domain name and registrant information, together.

#### 1.4. Domain Name Data:

1.4.1. **Query format:** whois EXAMPLE.TLD

1.4.2. **Response format:**

Domain Name: EXAMPLE.TLD  
Domain ID: D1234567-TLD  
WHOIS Server: whois.example.tld  
Referral URL: http://www.example.tld  
Updated Date: 2009-05-29T20:13:00Z  
Creation Date: 2000-10-08T00:45:00Z  
Registry Expiry Date: 2010-10-08T00:44:59Z  
Sponsoring Registrar: EXAMPLE REGISTRAR LLC  
Sponsoring Registrar IANA ID: 5555555  
Domain Status: clientDeleteProhibited  
Domain Status: clientRenewProhibited  
Domain Status: clientTransferProhibited  
Domain Status: serverUpdateProhibited  
Registrant ID: 5372808-ERL  
Registrant Name: EXAMPLE REGISTRANT  
Registrant Organization: EXAMPLE ORGANIZATION  
Registrant Street: 123 EXAMPLE STREET  
Registrant City: ANYTOWN  
Registrant State/Province: AP  
Registrant Postal Code: A1A1A1  
Registrant Country: EX

Registrant Phone: +1.5555551212  
Registrant Phone Ext: 1234  
Registrant Fax: +1.5555551213  
Registrant Fax Ext: 4321  
Registrant Email: EMAIL@EXAMPLE.TLD  
Admin ID: 5372809-ERL  
Admin Name: EXAMPLE REGISTRANT ADMINISTRATIVE  
Admin Organization: EXAMPLE REGISTRANT ORGANIZATION  
Admin Street: 123 EXAMPLE STREET  
Admin City: ANYTOWN  
Admin State/Province: AP  
Admin Postal Code: A1A1A1  
Admin Country: EX  
Admin Phone: +1.5555551212  
Admin Phone Ext: 1234  
Admin Fax: +1.5555551213  
Admin Fax Ext:  
Admin Email: EMAIL@EXAMPLE.TLD  
Tech ID: 5372811-ERL  
Tech Name: EXAMPLE REGISTRAR TECHNICAL  
Tech Organization: EXAMPLE REGISTRAR LLC  
Tech Street: 123 EXAMPLE STREET  
Tech City: ANYTOWN  
Tech State/Province: AP  
Tech Postal Code: A1A1A1  
Tech Country: EX  
Tech Phone: +1.1235551234  
Tech Phone Ext: 1234  
Tech Fax: +1.5555551213  
Tech Fax Ext: 93  
Tech Email: EMAIL@EXAMPLE.TLD  
Name Server: NS01.EXAMPLEREGISTRAR.TLD  
Name Server: NS02.EXAMPLEREGISTRAR.TLD  
DNSSEC: signedDelegation  
DNSSEC: unsigned  
>>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

### 1.5. Registrar Data:

1.5.1. **Query format:** whois "registrar Example Registrar, Inc."

1.5.2. **Response format:**

Registrar Name: Example Registrar, Inc.  
Street: 1234 Admiralty Way  
City: Marina del Rey  
State/Province: CA  
Postal Code: 90292  
Country: US  
Phone Number: +1.3105551212  
Fax Number: +1.3105551213

Email: registrar@example.tld  
WHOIS Server: whois.example-registrar.tld  
Referral URL: http://www.example-registrar.tld  
Admin Contact: Joe Registrar  
Phone Number: +1.3105551213  
Fax Number: +1.3105551213  
Email: joeregistrar@example-registrar.tld  
Admin Contact: Jane Registrar  
Phone Number: +1.3105551214  
Fax Number: +1.3105551213  
Email: janeregistrar@example-registrar.tld  
Technical Contact: John Geek  
Phone Number: +1.3105551215  
Fax Number: +1.3105551216  
Email: johngeek@example-registrar.tld  
>>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

#### 1.6. Nameserver Data:

1.6.1. **Query format:** whois "NS1.EXAMPLE.TLD" or whois "nameserver (IP Address)"

1.6.2. **Response format:**

Server Name: NS1.EXAMPLE.TLD  
IP Address: 192.0.2.123  
IP Address: 2001:0DB8::1  
Registrar: Example Registrar, Inc.  
WHOIS Server: whois.example-registrar.tld  
Referral URL: http://www.example-registrar.tld  
>>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

1.7. The format of the following data fields: domain status, individual and organizational names, address, street, city, state/province, postal code, country, telephone and fax numbers, email addresses, date and times should conform to the mappings specified in EPP RFCs 5730-5734 so that the display of this information (or values return in WHOIS responses) can be uniformly processed and understood.

1.8. **Searchability.** Offering searchability capabilities on the Directory Services is optional but if offered by the Registry Operator it shall comply with the specification described in this section.

1.8.1. Registry Operator will offer searchability on the web-based Directory Service.

1.8.2. Registry Operator will offer partial match capabilities, at least, on the following fields: domain name, contacts and registrant's name, and contact and registrant's postal address, including all the sub-fields described in EPP (e.g., street, city, state or province, etc.).

1.8.3. Registry Operator will offer exact-match capabilities, at least, on the following fields: registrar id, name server name, and name server's IP address (only applies to IP addresses stored by the registry, i.e., glue records).

1.8.4. Registry Operator will offer Boolean search capabilities supporting, at least, the following logical operators to join a set of search criteria: AND, OR, NOT.

1.8.5. Search results will include domain names matching the search criteria.

1.8.6. Registry Operator will: 1) implement appropriate measures to avoid abuse of this feature (e.g., permitting access only to legitimate authorized users); and 2) ensure the feature is in compliance with any applicable privacy laws or policies.

## 2. Zone File Access

### 2.1. Third-Party Access

2.1.1. **Zone File Access Agreement.** Registry Operator will enter into an agreement with any Internet user that will allow such user to access an Internet host server or servers designated by Registry Operator and download zone file data. The agreement will be standardized, facilitated and administered by a Centralized Zone Data Access Provider (the “CZDA Provider”). Registry Operator will provide access to zone file data per Section 2.1.3 and do so using the file format described in Section 2.1.4. Notwithstanding the foregoing, (a) the CZDA Provider may reject the request for access of any user that does not satisfy the credentialing requirements in Section 2.1.2 below; (b) Registry Operator may reject the request for access of any user that does not provide correct or legitimate credentials under Section 2.1.2 or where Registry Operator reasonably believes will violate the terms of Section 2.1.5. below; and, (c) Registry Operator may revoke access of any user if Registry Operator has evidence to support that the user has violated the terms of Section 2.1.5.

2.1.2. **Credentialing Requirements.** Registry Operator, through the facilitation of the CZDA Provider, will request each user to provide it with information sufficient to correctly identify and locate the user. Such user information will include, without limitation, company name, contact name, address, telephone number, facsimile number, email address, and the Internet host machine name and IP address.

2.1.3. **Grant of Access.** Each Registry Operator will provide the Zone File FTP (or other Registry supported) service for an ICANN-specified and managed URL (specifically, <TLD>.zda.icann.org where <TLD> is the TLD for which the registry is responsible) for the user to access the Registry’s zone data archives. Registry Operator will grant the user a non-exclusive, non-transferable, limited right to access Registry Operator’s Zone File FTP server, and to transfer a copy of the top-level domain zone files, and any associated cryptographic checksum files no more than once per 24 hour period using FTP, or other data transport and access protocols that may be prescribed by ICANN. For every zone file access server, the zone files are in the top-level directory called <zone>.zone.gz, with <zone>.zone.gz.md5 and <zone>.zone.gz.sig to verify downloads. If the Registry Operator also provides historical data, it will use the naming pattern <zone>-yyyymmdd.zone.gz, etc.

2.1.4. **File Format Standard.** Registry Operator will provide zone files using a sub-format of the standard Master File format as originally defined in RFC 1035, Section 5, including all the records present in the actual zone used in the public DNS. Sub-format is as follows:

1. Each record must include all fields in one line as: <domain-name> <TTL> <class> <type> <RDATA>.
2. Class and Type must use the standard mnemonics and must be in lower case.

3. TTL must be present as a decimal integer.
4. Use of /X and /DDD inside domain names is allowed.
5. All domain names must be in lower case.
6. Must use exactly one tab as separator of fields inside a record.
7. All domain names must be fully qualified.
8. No \$ORIGIN directives.
9. No use of "@" to denote current origin.
10. No use of "blank domain names" at the beginning of a record to continue the use of the domain name in the previous record.
11. No \$INCLUDE directives.
12. No \$TTL directives.
13. No use of parentheses, e.g., to continue the list of fields in a record across a line boundary.
14. No use of comments.
15. No blank lines.
16. The SOA record should be present at the top and (duplicated at) the end of the zone file.
17. With the exception of the SOA record, all the records in a file must be in alphabetical order.
18. One zone per file. If a TLD divides its DNS data into multiple zones, each goes into a separate file named as above, with all the files combined using tar into a file called <tld>.zone.tar.

2.1.5. **Use of Data by User.** Registry Operator will permit user to use the zone file for lawful purposes; provided that, (a) user takes all reasonable steps to protect against unauthorized access to and use and disclosure of the data, and (b) under no circumstances will Registry Operator be required or permitted to allow user to use the data to, (i) allow, enable, or otherwise support the transmission by e-mail, telephone, or facsimile of mass unsolicited, commercial advertising or solicitations to entities other than user's own existing customers, or (ii) enable high volume, automated, electronic processes that send queries or data to the systems of Registry Operator or any ICANN-accredited registrar.

2.1.6. **Term of Use.** Registry Operator, through CZDA Provider, will provide each user with access to the zone file for a period of not less than three (3) months. Registry Operator will allow users to renew their Grant of Access.

2.1.7. **No Fee for Access.** Registry Operator will provide, and CZDA Provider will facilitate, access to the zone file to user at no cost.

## 2.2 Co-operation

2.2.1. **Assistance.** Registry Operator will co-operate and provide reasonable assistance to ICANN and the CZDA Provider to facilitate and maintain the efficient access of zone file data by permitted users as contemplated under this Schedule.

**2.3 ICANN Access.** Registry Operator shall provide bulk access to the zone files for the TLD to ICANN or its designee on a continuous basis in the manner ICANN may reasonably specify from time to time.

**2.4 Emergency Operator Access.** Registry Operator shall provide bulk access to the zone files for the TLD to the Emergency Operators designated by ICANN on a continuous basis in the manner ICANN may reasonably specify from time to time.

### 3. Bulk Registration Data Access to ICANN

**3.1. Periodic Access to Thin Registration Data.** In order to verify and ensure the operational stability of Registry Services as well as to facilitate compliance checks on accredited registrars, Registry Operator will provide ICANN on a weekly basis (the day to be designated by ICANN) with up-to-date Registration Data as specified below. Data will include data committed as of 00:00:00 UTC on the day previous to the one designated for retrieval by ICANN.

**3.1.1. Contents.** Registry Operator will provide, at least, the following data for all registered domain names: domain name, domain name repository object id (roid), registrar id (IANA ID), statuses, last updated date, creation date, expiration date, and name server names. For sponsoring registrars, at least, it will provide: registrar name, registrar repository object id (roid), hostname of registrar Whois server, and URL of registrar.

**3.1.2. Format.** The data will be provided in the format specified in Specification 2 for Data Escrow (including encryption, signing, etc.) but including only the fields mentioned in the previous section, i.e., the file will only contain Domain and Registrar objects with the fields mentioned above. Registry Operator has the option to provide a full deposit file instead as specified in Specification 2.

**3.1.3. Access.** Registry Operator will have the file(s) ready for download as of 00:00:00 UTC on the day designated for retrieval by ICANN. The file(s) will be made available for download by SFTP, though ICANN may request other means in the future.

**3.2. Exceptional Access to Thick Registration Data.** In case of a registrar failure, de-accreditation, court order, etc. that prompts the temporary or definitive transfer of its domain names to another registrar, at the request of ICANN, Registry Operator will provide ICANN with up-to-date data for the domain names of the losing registrar. The data will be provided in the format specified in Specification 2 for Data Escrow. The file will only contain data related to the domain names of the losing registrar. Registry Operator will provide the data within 2 business days. Unless otherwise agreed by Registry Operator and ICANN, the file will be made available for download by ICANN in the same manner as the data specified in Section 3.1. of this Specification.

## SPECIFICATION 5

### SCHEDULE OF RESERVED NAMES AT THE SECOND LEVEL IN GTLD REGISTRIES

Except to the extent that ICANN otherwise expressly authorizes in writing, Registry Operator shall reserve (i.e., Registry Operator shall not register, delegate, use or otherwise make available such labels to any third party, but may register such labels in its own name in order to withhold them from delegation or use) names formed with the following labels from initial (i.e. other than renewal) registration within the TLD:

1. **Example. The label “EXAMPLE”** shall be reserved at the second level and at all other levels within the TLD at which Registry Operator makes registrations.
2. **Two-character labels.** All two-character labels shall be initially reserved. The reservation of a two-character label string may be released to the extent that Registry Operator reaches agreement with the government and country-code manager. The Registry Operator may also propose release of these reservations based on its implementation of measures to avoid confusion with the corresponding country codes.
3. **Tagged Domain Names.** Labels may only include hyphens in the third and fourth position if they represent valid internationalized domain names in their ASCII encoding (for example "xn--ndk061n").
4. **Second-Level Reservations for Registry Operations.** The following names are reserved for use in connection with the operation of the registry for the TLD. Registry Operator may use them, but upon conclusion of Registry Operator's designation as operator of the registry for the TLD they shall be transferred as specified by ICANN: NIC, WWW, IRIS and WHOIS.
5. **Country and Territory Names.** The country and territory names contained in the following internationally recognized lists shall be initially reserved at the second level and at all other levels within the TLD at which the Registry Operator provides for registrations:
  - 5.1. the short form (in English) of all country and territory names contained on the ISO 3166-1 list, as updated from time to time, including the European Union, which is exceptionally reserved on the ISO 3166-1 list, and its scope extended in August 1999 to any application needing to represent the name European Union  
<[http://www.iso.org/iso/support/country\\_codes/iso\\_3166\\_code\\_lists/iso-3166-1\\_decoding\\_table.htm#EU](http://www.iso.org/iso/support/country_codes/iso_3166_code_lists/iso-3166-1_decoding_table.htm#EU)>;
  - 5.2. the United Nations Group of Experts on Geographical Names, Technical Reference Manual for the Standardization of Geographical Names, Part III Names of Countries of the World; and
  - 5.3. the list of United Nations member states in 6 official United Nations languages prepared by the Working Group on Country Names of the United Nations Conference on the Standardization of Geographical Names;

provided, that the reservation of specific country and territory names may be released to the extent that Registry Operator reaches agreement with the applicable government(s), provided, further, that

Registry Operator may also propose release of these reservations, subject to review by ICANN's Governmental Advisory Committee and approval by ICANN.

## SPECIFICATION 6

### REGISTRY INTEROPERABILITY AND CONTINUITY SPECIFICATIONS

#### 1. Standards Compliance

1.1. **DNS.** Registry Operator shall comply with relevant existing RFCs and those published in the future by the Internet Engineering Task Force (IETF) including all successor standards, modifications or additions thereto relating to the DNS and name server operations including without limitation RFCs 1034, 1035, 1982, 2181, 2182, 2671, 3226, 3596, 3597, 4343, and 5966.

1.2. **EPP.** Registry Operator shall comply with relevant existing RFCs and those published in the future by the Internet Engineering Task Force (IETF) including all successor standards, modifications or additions thereto relating to the provisioning and management of domain names using the Extensible Provisioning Protocol (EPP) in conformance with RFCs 5910, 5730, 5731, 5732, 5733 and 5734. If Registry Operator implements Registry Grace Period (RGP), it will comply with RFC 3915 and its successors. If Registry Operator requires the use of functionality outside the base EPP RFCs, Registry Operator must document EPP extensions in Internet-Draft format following the guidelines described in RFC 3735. Registry Operator will provide and update the relevant documentation of all the EPP Objects and Extensions supported to ICANN prior to deployment.

1.3. **DNSSEC.** Registry Operator shall sign its TLD zone files implementing Domain Name System Security Extensions (“DNSSEC”). During the Term, Registry Operator shall comply with RFCs 4033, 4034, 4035, 4509 and their successors, and follow the best practices described in RFC 4641 and its successors. If Registry Operator implements Hashed Authenticated Denial of Existence for DNS Security Extensions, it shall comply with RFC 5155 and its successors. Registry Operator shall accept public-key material from child domain names in a secure manner according to industry best practices. Registry shall also publish in its website the DNSSEC Practice Statements (DPS) describing critical security controls and procedures for key material storage, access and usage for its own keys and secure acceptance of registrants’ public-key material. Registry Operator shall publish its DPS following the format described in “DPS-framework” (currently in draft format, see <http://tools.ietf.org/html/draft-ietf-dnsop-dnssec-dps-framework>) within 180 days after the “DPS-framework” becomes an RFC.

1.4. **IDN.** If the Registry Operator offers Internationalized Domain Names (“IDNs”), it shall comply with RFCs 5890, 5891, 5892, 5893 and their successors. Registry Operator shall comply with the ICANN IDN Guidelines at <<http://www.icann.org/en/topics/idn/implementation-guidelines.htm>>, as they may be amended, modified, or superseded from time to time. Registry Operator shall publish and keep updated its IDN Tables and IDN Registration Rules in the IANA Repository of IDN Practices as specified in the ICANN IDN Guidelines.

1.5. **IPv6.** Registry Operator shall be able to accept IPv6 addresses as glue records in its Registry System and publish them in the DNS. Registry Operator shall offer public IPv6 transport for, at least, two of the Registry’s name servers listed in the root zone with the corresponding IPv6 addresses registered with IANA. Registry Operator should follow “DNS IPv6 Transport Operational Guidelines” as described in BCP 91 and the recommendations and considerations described in RFC 4472. Registry Operator shall offer public IPv6 transport for its Registration Data Publication Services as defined in Specification 4 of this Agreement; e.g. Whois (RFC 3912), Web based Whois. Registry Operator shall offer public IPv6 transport for its Shared Registration System (SRS) to any Registrar, no later than six months after receiving the first request in writing from a gTLD accredited Registrar willing to operate with the SRS over IPv6.

## 2. Registry Services

2.1. **Registry Services.** “Registry Services” are, for purposes of the Registry Agreement, defined as the following: (a) those services that are operations of the registry critical to the following tasks: the receipt of data from registrars concerning registrations of domain names and name servers; provision to registrars of status information relating to the zone servers for the TLD; dissemination of TLD zone files; operation of the registry DNS servers; and dissemination of contact and other information concerning domain name server registrations in the TLD as required by this Agreement; (b) other products or services that the Registry Operator is required to provide because of the establishment of a Consensus Policy as defined in Specification 1; (c) any other products or services that only a registry operator is capable of providing, by reason of its designation as the registry operator; and (d) material changes to any Registry Service within the scope of (a), (b) or (c) above.

2.2. **Wildcard Prohibition.** For domain names which are either not registered, or the registrant has not supplied valid records such as NS records for listing in the DNS zone file, or their status does not allow them to be published in the DNS, the use of DNS wildcard Resource Records as described in RFCs 1034 and 4592 or any other method or technology for synthesizing DNS Resources Records or using redirection within the DNS by the Registry is prohibited. When queried for such domain names the authoritative name servers must return a “Name Error” response (also known as NXDOMAIN), RCODE 3 as described in RFC 1035 and related RFCs. This provision applies for all DNS zone files at all levels in the DNS tree for which the Registry Operator (or an affiliate engaged in providing Registration Services) maintains data, arranges for such maintenance, or derives revenue from such maintenance.

## 3. Registry Continuity

3.1. **High Availability.** Registry Operator will conduct its operations using network and geographically diverse, redundant servers (including network-level redundancy, end-node level redundancy and the implementation of a load balancing scheme where applicable) to ensure continued operation in the case of technical failure (widespread or local), or an extraordinary occurrence or circumstance beyond the control of the Registry Operator.

3.2. **Extraordinary Event.** Registry Operator will use commercially reasonable efforts to restore the critical functions of the registry within 24 hours after the termination of an extraordinary event beyond the control of the Registry Operator and restore full system functionality within a maximum of 48 hours following such event, depending on the type of critical function involved. Outages due to such an event will not be considered a lack of service availability.

3.3. **Business Continuity.** Registry Operator shall maintain a business continuity plan, which will provide for the maintenance of Registry Services in the event of an extraordinary event beyond the control of the Registry Operator or business failure of Registry Operator, and may include the designation of a Registry Services continuity provider. If such plan includes the designation of a Registry Services continuity provider, Registry Operator shall provide the name and contact information for such Registry Services continuity provider to ICANN. In the case of an extraordinary event beyond the control of the Registry Operator where the Registry Operator cannot be contacted, Registry Operator consents that ICANN may contact the designated Registry Services continuity provider, if one exists. Registry Operator shall conduct Registry Services Continuity testing at least once per year.

## 4. Abuse Mitigation

4.1. **Abuse Contact.** Registry Operator shall provide to ICANN and publish on its website its accurate contact details including a valid email and mailing address as well as a primary contact for handling inquiries related to malicious conduct in the TLD, and will provide ICANN with prompt notice of any changes to such contact details.

4.2. **Malicious Use of Orphan Glue Records.** Registry Operators shall take action to remove orphan glue records (as defined at <http://www.icann.org/en/committees/security/sac048.pdf>) when provided with evidence in written form that such records are present in connection with malicious conduct.

4. **Supported Initial and Renewal Registration Periods**

4.1. **Initial Registration Periods.** Initial registrations of registered names may be made in the registry in one (1) year increments for up to a maximum of ten (10) years. For the avoidance of doubt, initial registrations of registered names may not exceed ten (10) years.

4.2. **Renewal Periods.** Renewal of registered names may be made in one (1) year increments for up to a maximum of ten (10) years. For the avoidance of doubt, renewal of registered names may not extend their registration period beyond ten (10) years from the time of the renewal.

## SPECIFICATION 7

### MINIMUM REQUIREMENTS FOR RIGHTS PROTECTION MECHANISMS

1. **Rights Protection Mechanisms.** Registry Operator shall implement and adhere to any rights protection mechanisms (“RPMs”) that may be mandated from time to time by ICANN. In addition to such RPMs, Registry Operator may develop and implement additional RPMs that discourage or prevent registration of domain names that violate or abuse another party’s legal rights. Registry Operator will include all ICANN mandated and independently developed RPMs in the registry-registrar agreement entered into by ICANN-accredited registrars authorized to register names in the TLD. Registry Operator shall implement in accordance with requirements established by ICANN each of the mandatory RPMs set forth in the Trademark Clearinghouse (posted at [url to be inserted when final Trademark Clearinghouse is adopted]), which may be revised by ICANN from time to time. Registry Operator shall not mandate that any owner of applicable intellectual property rights use any other trademark information aggregation, notification, or validation service in addition to or instead of the ICANN-designated Trademark Clearinghouse.

2. **Dispute Resolution Mechanisms.** Registry Operator will comply with the following dispute resolution mechanisms as they may be revised from time to time:

- a. the Trademark Post-Delegation Dispute Resolution Procedure (PDDRP) and the Registration Restriction Dispute Resolution Procedure (RRDRP) adopted by ICANN (posted at [urls to be inserted when final procedure is adopted]). Registry Operator agrees to implement and adhere to any remedies ICANN imposes (which may include any reasonable remedy, including for the avoidance of doubt, the termination of the Registry Agreement pursuant to Section 4.3(e) of the Registry Agreement) following a determination by any PDDRP or RRDRP panel and to be bound by any such determination; and
- b. the Uniform Rapid Suspension system (“URS”) adopted by ICANN (posted at [url to be inserted]), including the implementation of determinations issued by URS examiners.

## SPECIFICATION 8

### CONTINUED OPERATIONS INSTRUMENT

1. The Continued Operations Instrument shall (a) provide for sufficient financial resources to ensure the continued operation of the critical registry functions related to the TLD set forth in Section [\_\_] of the Applicant Guidebook posted at [url to be inserted upon finalization of Applicant Guidebook] (which is hereby incorporated by reference into this Specification 8) for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period of one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6<sup>th</sup>) anniversary of the Effective Date, and (b) be in the form of either (i) an irrevocable standby letter of credit, or (ii) an irrevocable cash escrow deposit, each meeting the requirements set forth in Section [\_\_] of the Applicant Guidebook posted at [url to be inserted upon finalization of Applicant Guidebook] (which is hereby incorporated by reference into this Specification 8). Registry Operator shall use its best efforts to take all actions necessary or advisable to maintain in effect the Continued Operations Instrument for a period of six (6) years from the Effective Date, and to maintain ICANN as a third party beneficiary thereof. Registry Operator shall provide to ICANN copies of all final documents relating to the Continued Operations Instrument and shall keep ICANN reasonably informed of material developments relating to the Continued Operations Instrument. Registry Operator shall not agree to, or permit, any amendment of, or waiver under, the Continued Operations Instrument or other documentation relating thereto without the prior written consent of ICANN (such consent not to be unreasonably withheld). The Continued Operations Instrument shall expressly state that ICANN may access the financial resources of the Continued Operations Instrument pursuant to Section 2.13 or Section 4.5 [*insert for government entity*: or Section 7.14] of the Registry Agreement.
2. If, notwithstanding the use of best efforts by Registry Operator to satisfy its obligations under the preceding paragraph, the Continued Operations Instrument expires or is terminated by another party thereto, in whole or in part, for any reason, prior to the sixth anniversary of the Effective Date, Registry Operator shall promptly (i) notify ICANN of such expiration or termination and the reasons therefor and (ii) arrange for an alternative instrument that provides for sufficient financial resources to ensure the continued operation of the Registry Services related to the TLD for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period of one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6) anniversary of the Effective Date (an “Alternative Instrument”). Any such Alternative Instrument shall be on terms no less favorable to ICANN than the Continued Operations Instrument and shall otherwise be in form and substance reasonably acceptable to ICANN.
3. Notwithstanding anything to the contrary contained in this Specification 8, at any time, Registry Operator may replace the Continued Operations Instrument with an alternative

instrument that (i) provides for sufficient financial resources to ensure the continued operation of the Registry Services related to the TLD for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6) anniversary of the Effective Date, and (ii) contains terms no less favorable to ICANN than the Continued Operations Instrument and is otherwise in form and substance reasonably acceptable to ICANN. In the event Registry Operation replaces the Continued Operations Instrument either pursuant to paragraph 2 or this paragraph 3, the terms of this Specification 8 shall no longer apply with respect to the original Continuing Operations Instrument, but shall thereafter apply with respect to such replacement instrument(s).

## SPECIFICATION 9

### Registry Operator Code of Conduct

1. In connection with the operation of the registry for the TLD, Registry Operator will not, and will not allow any parent, subsidiary, Affiliate, subcontractor or other related entity, to the extent such party is engaged in the provision of Registry Services with respect to the TLD (each, a "Registry Related Party"), to:
  - a. directly or indirectly show any preference or provide any special consideration to any registrar with respect to operational access to registry systems and related registry services, unless comparable opportunities to qualify for such preferences or considerations are made available to all registrars on substantially similar terms and subject to substantially similar conditions;
  - b. register domain names in its own right, except for names registered through an ICANN accredited registrar that are reasonably necessary for the management, operations and purpose of the TLD, provided, that Registry Operator may reserve names from registration pursuant to Section 2.6 of the Registry Agreement;
  - c. register names in the TLD or sub-domains of the TLD based upon proprietary access to information about searches or resolution requests by consumers for domain names not yet registered (commonly known as, "front-running");
  - d. allow any Affiliated registrar to disclose user data to Registry Operator or any Registry Related Party, except as necessary for the management and operations of the TLD, unless all unrelated third parties (including other registry operators) are given equivalent access to such user data on substantially similar terms and subject to substantially similar conditions; or
  - e. disclose confidential registry data or confidential information about its Registry Services or operations to any employee of any DNS services provider, except as necessary for the management and operations of the TLD, unless all unrelated third parties (including other registry operators) are given equivalent access to such confidential registry data or confidential information on substantially similar terms and subject to substantially similar conditions.
2. If Registry Operator or a Registry Related Party also operates as a provider of registrar or registrar-reseller services, Registry Operator will, or will cause such Registry Related Party to, maintain separate books of accounts with respect to its registrar or registrar-reseller operations.
3. Registry Operator will conduct internal reviews at least once per calendar year to ensure compliance with this Code of Conduct. Within twenty (20) calendar days

- following the end of each calendar year, Registry Operator will provide the results of the internal review, along with a certification executed by an executive officer of Registry Operator certifying as to Registry Operator's compliance with this Code of Conduct, via email to an address to be provided by ICANN. (ICANN may specify in the future the form and contents of such reports or that the reports be delivered by other reasonable means.) Registry Operator agrees that ICANN may publicly post such results and certification.
4. Nothing set forth herein shall: (i) limit ICANN from conducting investigations of claims of Registry Operator's non-compliance with this Code of Conduct; or (ii) provide grounds for Registry Operator to refuse to cooperate with ICANN investigations of claims of Registry Operator's non-compliance with this Code of Conduct.
  5. Nothing set forth herein shall limit the ability of Registry Operator or any Registry Related Party, to enter into arms-length transactions in the ordinary course of business with a registrar or reseller with respect to products and services unrelated in all respects to the TLD.
  6. Registry Operator may request an exemption to this Code of Conduct, and such exemption may be granted by ICANN in ICANN's reasonable discretion, if Registry Operator demonstrates to ICANN's reasonable satisfaction that (i) all domain name registrations in the TLD are registered to, and maintained by, Registry Operator for its own exclusive use, (ii) Registry Operator does not sell, distribute or transfer control or use of any registrations in the TLD to any third party that is not an Affiliate of Registry Operator, and (iii) application of this Code of Conduct to the TLD is not necessary to protect the public interest.

## SPECIFICATION 10

### REGISTRY PERFORMANCE SPECIFICATIONS

#### 1. Definitions

- 1.1. **DNS.** Refers to the Domain Name System as specified in RFCs 1034, 1035, and related RFCs.
- 1.2. **DNSSEC proper resolution.** There is a valid DNSSEC chain of trust from the root trust anchor to a particular domain name, e.g., a TLD, a domain name registered under a TLD, etc.
- 1.3. **EPP.** Refers to the Extensible Provisioning Protocol as specified in RFC 5730 and related RFCs.
- 1.4. **IP address.** Refers to IPv4 or IPv6 addresses without making any distinction between the two. When there is need to make a distinction, IPv4 or IPv6 is used.
- 1.5. **Probes.** Network hosts used to perform (DNS, EPP, etc.) tests (see below) that are located at various global locations.
- 1.6. **RDDS.** Registration Data Directory Services refers to the collective of WHOIS and Web-based WHOIS services as defined in Specification 4 of this Agreement.
- 1.7. **RTT.** Round-Trip Time or **RTT** refers to the time measured from the sending of the first bit of the first packet of the sequence of packets needed to make a request until the reception of the last bit of the last packet of the sequence needed to receive the response. If the client does not receive the whole sequence of packets needed to consider the response as received, the request will be considered unanswered.
- 1.8. **SLR.** Service Level Requirement is the level of service expected for a certain parameter being measured in a Service Level Agreement (SLA).

#### 2. Service Level Agreement Matrix

	Parameter	SLR (monthly basis)
<b>DNS</b>	DNS service availability	0 min downtime = 100% availability
	DNS name server availability	≤ 432 min of downtime (≈ 99%)
	TCP DNS resolution RTT	≤ 1500 ms, for at least 95% of the queries
	UDP DNS resolution RTT	≤ 500 ms, for at least 95% of the queries
	DNS update time	≤ 60 min, for at least 95% of the probes
<b>RDDS</b>	RDDS availability	≤ 864 min of downtime (≈ 98%)
	RDDS query RTT	≤ 2000 ms, for at least 95% of the queries
	RDDS update time	≤ 60 min, for at least 95% of the probes
<b>EPP</b>	EPP service availability	≤ 864 min of downtime (≈ 98%)
	EPP session-command RTT	≤ 4000 ms, for at least 90% of the commands
	EPP query-command RTT	≤ 2000 ms, for at least 90% of the commands
	EPP transform-command RTT	≤ 4000 ms, for at least 90% of the commands

Registry Operator is encouraged to do maintenance for the different services at the times and dates of statistically lower traffic for each service. However, note that there is no provision for planned outages or similar; any downtime, be it for maintenance or due to system failures, will be noted simply as downtime and counted for SLA purposes.

### 3. DNS

- 3.1. **DNS service availability.** Refers to the ability of the group of listed-as-authoritative name servers of a particular domain name (e.g., a TLD), to answer DNS queries from DNS probes. For the service to be considered available at a particular moment, at least, two of the delegated name servers registered in the DNS must have successful results from “**DNS tests**” to each of their public-DNS registered “**IP addresses**” to which the name server resolves. If 51% or more of the DNS testing probes see the service as unavailable during a given time, the DNS service will be considered unavailable.
- 3.2. **DNS name server availability.** Refers to the ability of a public-DNS registered “**IP address**” of a particular name server listed as authoritative for a domain name, to answer DNS queries from an Internet user. All the public DNS-registered “**IP address**” of all name servers of the domain name being monitored shall be tested individually. If 51% or more of the DNS testing probes get undefined/unanswered results from “**DNS tests**” to a name server “**IP address**” during a given time, the name server “**IP address**” will be considered unavailable.
- 3.3. **UDP DNS resolution RTT.** Refers to the **RTT** of the sequence of two packets, the UDP DNS query and the corresponding UDP DNS response. If the **RTT** is 5 times greater than the time specified in the relevant **SLR**, the **RTT** will be considered undefined.
- 3.4. **TCP DNS resolution RTT.** Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the DNS response for only one DNS query. If the **RTT** is 5 times greater than the time specified in the relevant **SLR**, the **RTT** will be considered undefined.
- 3.5. **DNS resolution RTT.** Refers to either “**UDP DNS resolution RTT**” or “**TCP DNS resolution RTT**”.
- 3.6. **DNS update time.** Refers to the time measured from the reception of an EPP confirmation to a transform command on a domain name, until the name servers of the parent domain name answer “**DNS queries**” with data consistent with the change made. This only applies for changes to DNS information.
- 3.7. **DNS test.** Means one non-recursive DNS query sent to a particular “**IP address**” (via UDP or TCP). If DNSSEC is offered in the queried DNS zone, for a query to be considered answered, the signatures must be positively verified against a corresponding DS record published in the parent zone or, if the parent is not signed, against a statically configured Trust Anchor. The answer to the query must contain the corresponding information from the Registry System, otherwise the query will be considered unanswered. A query with a “**DNS resolution RTT**” 5 times higher than the corresponding SLR, will be considered unanswered. The possible results to a DNS test are: a number in milliseconds corresponding to the “**DNS resolution RTT**” or, undefined/unanswered.
- 3.8. **Measuring DNS parameters.** Every minute, every DNS probe will make an UDP or TCP “**DNS test**” to each of the public-DNS registered “**IP addresses**” of the name servers of the domain

name being monitored. If a “**DNS test**” result is undefined/unanswered, the tested IP will be considered unavailable from that probe until it is time to make a new test.

- 3.9. **Collating the results from DNS probes.** The minimum number of active testing probes to consider a measurement valid is 20 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.
- 3.10. **Distribution of UDP and TCP queries.** DNS probes will send UDP or TCP “**DNS test**” approximating the distribution of these queries.
- 3.11. **Placement of DNS probes.** Probes for measuring DNS parameters shall be placed as near as possible to the DNS resolvers on the networks with the most users across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

#### 4. **RDDS**

- 4.1. **RDDS availability.** Refers to the ability of all the RDDS services for the TLD, to respond to queries from an Internet user with appropriate data from the relevant Registry System. If 51% or more of the RDDS testing probes see any of the RDDS services as unavailable during a given time, the RDDS will be considered unavailable.
- 4.2. **WHOIS query RTT.** Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the WHOIS response. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.
- 4.3. **Web-based-WHOIS query RTT.** Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the HTTP response for only one HTTP request. If Registry Operator implements a multiple-step process to get to the information, only the last step shall be measured. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.
- 4.4. **RDDS query RTT.** Refers to the collective of “**WHOIS query RTT**” and “**Web-based-WHOIS query RTT**”.
- 4.5. **RDDS update time.** Refers to the time measured from the reception of an EPP confirmation to a transform command on a domain name, host or contact, up until the servers of the RDDS services reflect the changes made.
- 4.6. **RDDS test.** Means one query sent to a particular “**IP address**” of one of the servers of one of the RDDS services. Queries shall be about existing objects in the Registry System and the responses must contain the corresponding information otherwise the query will be considered unanswered. Queries with an **RTT** 5 times higher than the corresponding SLR will be considered as unanswered. The possible results to an RDDS test are: a number in milliseconds corresponding to the **RTT** or undefined/unanswered.
- 4.7. **Measuring RDDS parameters.** Every 5 minutes, RDDS probes will select one IP address from all the public-DNS registered “**IP addresses**” of the servers for each RDDS service of the TLD being monitored and make an “**RDDS test**” to each one. If an “**RDDS test**” result is

undefined/unanswered, the corresponding RDDS service will be considered as unavailable from that probe until it is time to make a new test.

4.8. **Collating the results from RDDS probes.** The minimum number of active testing probes to consider a measurement valid is 10 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.

4.9. **Placement of RDDS probes.** Probes for measuring RDDS parameters shall be placed inside the networks with the most users across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

## 5. EPP

5.1. **EPP service availability.** Refers to the ability of the TLD EPP servers as a group, to respond to commands from the Registry accredited Registrars, who already have credentials to the servers. The response shall include appropriate data from the Registry System. An EPP command with “**EPP command RTT**” 5 times higher than the corresponding SLR will be considered as unanswered. If 51% or more of the EPP testing probes see the EPP service as unavailable during a given time, the EPP service will be considered unavailable.

5.2. **EPP session-command RTT.** Refers to the **RTT** of the sequence of packets that includes the sending of a session command plus the reception of the EPP response for only one EPP session command. For the login command it will include packets needed for starting the TCP session. For the logout command it will include packets needed for closing the TCP session. EPP session commands are those described in section 2.9.1 of EPP RFC 5730. If the **RTT** is 5 times or more the corresponding SLR, the **RTT** will be considered undefined.

5.3. **EPP query-command RTT.** Refers to the **RTT** of the sequence of packets that includes the sending of a query command plus the reception of the EPP response for only one EPP query command. It does not include packets needed for the start or close of either the EPP or the TCP session. EPP query commands are those described in section 2.9.2 of EPP RFC 5730. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.

5.4. **EPP transform-command RTT.** Refers to the **RTT** of the sequence of packets that includes the sending of a transform command plus the reception of the EPP response for only one EPP transform command. It does not include packets needed for the start or close of either the EPP or the TCP session. EPP transform commands are those described in section 2.9.3 of EPP RFC 5730. If the **RTT** is 5 times or more the corresponding SLR, the **RTT** will be considered undefined.

5.5. **EPP command RTT.** Refers to “**EPP session-command RTT**”, “**EPP query-command RTT**” or “**EPP transform-command RTT**”.

5.6. **EPP test.** Means one EPP command sent to a particular “**IP address**” for one of the EPP servers. Query and transform commands, with the exception of “create”, shall be about existing objects in the Registry System. The response shall include appropriate data from the Registry System. The possible results to an EPP test are: a number in milliseconds corresponding to the “**EPP command RTT**” or undefined/unanswered.

5.7. **Measuring EPP parameters.** Every 5 minutes, EPP probes will select one “**IP address**“ of the EPP servers of the TLD being monitored and make an “**EPP test**”; every time they should alternate between the 3 different types of commands and between the commands inside each category. If an “**EPP test**” result is undefined/unanswered, the EPP service will be considered as unavailable from that probe until it is time to make a new test.

5.8. **Collating the results from EPP probes.** The minimum number of active testing probes to consider a measurement valid is 5 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.

5.9. **Placement of EPP probes.** Probes for measuring EPP parameters shall be placed inside or close to Registrars points of access to the Internet across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

## 6. Emergency Thresholds

The following matrix presents the Emergency Thresholds that, if reached by any of the services mentioned above for a TLD, would cause the Emergency Transition of the Critical Functions as specified in Section 2.13. of this Agreement.

<b>Critical Function</b>	<b>Emergency Threshold</b>
DNS service (all servers)	4-hour downtime / week
DNSSEC proper resolution	4-hour downtime / week
EPP	24-hour downtime / week
RDDS (WHOIS/Web-based WHOIS)	24-hour downtime / week
Data Escrow	Breach of the Registry Agreement caused by missing escrow deposits as described in Specification 2, Part B, Section 6.

## 7. Emergency Escalation

Escalation is strictly for purposes of notifying and investigating possible or potential issues in relation to monitored services. The initiation of any escalation and the subsequent cooperative investigations do not in themselves imply that a monitored service has failed its performance requirements.

Escalations shall be carried out between ICANN and Registry Operators, Registrars and Registry Operator, and Registrars and ICANN. Registry Operators and ICANN must provide said emergency operations departments. Current contacts must be maintained between ICANN and Registry Operators and published to Registrars, where relevant to their role in escalations, prior to any processing of an Emergency Escalation by all related parties, and kept current at all times.

### 7.1. **Emergency Escalation initiated by ICANN**

Upon reaching 10% of the Emergency thresholds as described in Section 6, ICANN’s emergency operations will initiate an Emergency Escalation with the relevant Registry Operator. An Emergency Escalation consists of the following minimum elements: electronic (i.e., email or SMS) and/or voice contact notification to the Registry Operator’s emergency operations department with detailed information concerning the issue being escalated, including evidence of monitoring failures, cooperative trouble-shooting of the monitoring failure between ICANN staff and the Registry Operator, and the

commitment to begin the process of rectifying issues with either the monitoring service or the service being monitoring.

### 7.2. **Emergency Escalation initiated by Registrars**

Registry Operator will maintain an emergency operations departments prepared to handle emergency requests from registrars. In the event that a registrar is unable to conduct EPP transactions with the Registry because of a fault with the Registry Service and is unable to either contact (through ICANN mandated methods of communication) the Registry Operator, or the Registry Operator is unable or unwilling to address the fault, the registrar may initiate an Emergency Escalation to the emergency operations department of ICANN. ICANN then may initiate an Emergency Escalation with the Registry Operator as explained above.

### 7.3. **Notifications of Outages and Maintenance**

In the event that a Registry Operator plans maintenance, they will provide related notice to the ICANN emergency operations department, at least, 24 hours ahead of that maintenance. ICANN's emergency operations department will note planned maintenance times, and suspend Emergency Escalation services for the monitored services during the expected maintenance outage period.

If Registry Operator declares an outage, as per their contractual obligations with ICANN, on services under SLA and performance requirements, it will notify the ICANN emergency operations department. During that declared outage, ICANN's emergency operations department will note and suspend Emergency Escalation services for the monitored services involved.

## 8. **Covenants of Performance Measurement**

- 8.1. **No interference.** Registry Operator shall not interfere with measurement **Probes**, including any form of preferential treatment of the requests for the monitored services. Registry Operator shall respond to the measurement tests described in this Specification as it would do with any other request from Internet users (for DNS and RDDS) or registrars (for EPP).
- 8.2. **ICANN testing registrar.** Registry Operator agrees that ICANN will have a testing registrar used for purposes of measuring the **SLRs** described above. Registry Operator agrees to not provide any differentiated treatment for the testing registrar other than no billing of the transactions. ICANN shall not use the registrar for registering domain names (or other registry objects) for itself or others, except for the purposes of verifying contractual compliance with the conditions described in this Agreement.

**TRADEMARK CLEARINGHOUSE**  
**30 MAY 2011**

**1. PURPOSE OF CLEARINGHOUSE**

- 1.1 The Trademark Clearinghouse is a central repository for information to be authenticated, stored, and disseminated, pertaining to the rights of trademark holders. ICANN will enter into an arms-length contract with service provider or providers, awarding the right to serve as a Trademark Clearinghouse Service Provider, i.e., to accept, authenticate, validate and facilitate the transmission of information related to certain trademarks.
- 1.2 The Clearinghouse will be required to separate its two primary functions: (i) authentication and validation of the trademarks in the Clearinghouse; and (ii) serving as a database to provide information to the new gTLD registries to support pre-launch Sunrise or Trademark Claims Services. Whether the same provider could serve both functions or whether two providers will be determined in the tender process.
- 1.3 The Registry shall only need to connect with one centralized database to obtain the information it needs to conduct its Sunrise or Trademark Claims Services regardless of the details of the Trademark Clearinghouse Service Provider's contract(s) with ICANN.
- 1.4 Trademark Clearinghouse Service Provider may provide ancillary services, as long as those services and any data used for those services are kept separate from the Clearinghouse database.
- 1.5 The Clearinghouse database will be a repository of authenticated information and disseminator of the information to a limited number of recipients. Its functions will be performed in accordance with a limited charter, and will not have any discretionary powers other than what will be set out in the charter with respect to authentication and validation. The Clearinghouse administrator(s) cannot create policy. Before material changes are made to the Clearinghouse functions, they will be reviewed through the ICANN public participation model.
- 1.6 Inclusion in the Clearinghouse is not proof of any right, nor does it create any legal rights. Failure to submit trademarks into the Clearinghouse should not be perceived to be lack of vigilance by trademark holders or a waiver of any rights, nor can any negative influence be drawn from such failure.

**2. SERVICE PROVIDERS**

- 2.1 The selection of Trademark Clearinghouse Service Provider(s) will be subject to predetermined criteria, but the foremost considerations will be the ability to store, authenticate, validate and disseminate the data at the highest level of technical stability

and security without interference with the integrity or timeliness of the registration process or registry operations.

- 2.2 Functions – Authentication/Validation; Database Administration. Public commentary has suggested that the best way to protect the integrity of the data and to avoid concerns that arise through sole-source providers would be to separate the functions of database administration and data authentication/validation.
  - 2.2.1 One entity will authenticate registrations ensuring the word marks qualify as registered or are court-validated word marks or word marks that are protected by statute or treaty. This entity would also be asked to ensure that proof of use of marks is provided, which can be demonstrated by furnishing a signed declaration and one specimen of current use.
  - 2.2.2 The second entity will maintain the database and provide Sunrise and Trademark Claims Services (described below).
- 2.3 Discretion will be used, balancing effectiveness, security and other important factors, to determine whether ICANN will contract with one or two entities - one to authenticate and validate, and the other to, administer in order to preserve integrity of the data.
- 2.4 Contractual Relationship.
  - 2.4.1 The Clearinghouse shall be separate and independent from ICANN. It will operate based on market needs and collect fees from those who use its services. ICANN may coordinate or specify interfaces used by registries and registrars, and provide some oversight or quality assurance function to ensure rights protection goals are appropriately met.
  - 2.4.2 The Trademark Clearinghouse Service Provider(s) (authenticator/validator and administrator) will be selected through an open and transparent process to ensure low costs and reliable, consistent service for all those utilizing the Clearinghouse services.
  - 2.4.3 The Service Provider(s) providing the authentication of the trademarks submitted into the Clearinghouse shall adhere to rigorous standards and requirements that would be specified in an ICANN contractual agreement.
  - 2.4.4 The contract shall include service level requirements, customer service availability (with the goal of seven days per week, 24 hours per day, 365 days per year), data escrow requirements, and equal access requirements for all persons and entities required to access the Trademark Clearinghouse database.

- 2.4.5 To the extent practicable, the contract should also include indemnification by Service Provider for errors such as false positives for participants such as Registries, ICANN, Registrants and Registrars.
- 2.5. Service Provider Requirements. The Clearinghouse Service Provider(s) should utilize regional marks authentication service providers (whether directly or through sub-contractors) to take advantage of local experts who understand the nuances of the trademark in question. Examples of specific performance criteria details in the contract award criteria and service-level-agreements are:
  - 2.5.1 provide 24 hour accessibility seven days a week (database administrator);
  - 2.5.2 employ systems that are technically reliable and secure (database administrator);
  - 2.5.3 use globally accessible and scalable systems so that multiple marks from multiple sources in multiple languages can be accommodated and sufficiently cataloged (database administrator and validator);
  - 2.5.4 accept submissions from all over the world - the entry point for trademark holders to submit their data into the Clearinghouse database could be regional entities or one entity;
  - 2.5.5 allow for multiple languages, with exact implementation details to be determined;
  - 2.5.6 provide access to the Registrants to verify and research Trademark Claims Notices;
  - 2.5.7 have the relevant experience in database administration, validation or authentication, as well as accessibility to and knowledge of the various relevant trademark laws (database administrator and authenticator); and
  - 2.5.8 ensure through performance requirements, including those involving interface with registries and registrars, that neither domain name registration timeliness, nor registry or registrar operations will be hindered (database administrator).

### **3. CRITERIA FOR TRADEMARK INCLUSION IN CLEARINGHOUSE**

- 3.1 The trademark holder will submit to one entity – a single entity for entry will facilitate access to the entire Clearinghouse database. If regional entry points are used, ICANN will publish an information page describing how to locate regional submission points. Regardless of the entry point into the Clearinghouse, the authentication procedures established will be uniform.
- 3.2 The standards for inclusion in the Clearinghouse are:
  - 3.2.1 Nationally or regionally registered word marks from all jurisdictions.
  - 3.2.2 Any word mark that has been validated through a court of law or other judicial proceeding.

- 3.2.3 Any word mark protected by a statute or treaty in effect at the time the mark is submitted to the Clearinghouse for inclusion.
  - 3.2.4 Other marks that constitute intellectual property.
  - 3.2.5 Protections afforded to trademark registrations do not extend to applications for registrations, marks within any opposition period or registered marks that were the subject of successful invalidation, cancellation or rectification proceedings.
- 3.3 The type of data supporting entry of a registered word mark into the Clearinghouse must include a copy of the registration or the relevant ownership information, including the requisite registration number(s), the jurisdictions where the registrations have issued, and the name of the owner of record.
- 3.4 Data supporting entry of a judicially validated word mark into the Clearinghouse must include the court documents, properly entered by the court, evidencing the validation of a given word mark.
- 3.5 Data supporting entry into the Clearinghouse of word marks protected by a statute or treaty in effect at the time the mark is submitted to the Clearinghouse for inclusion, must include a copy of the relevant portion of the statute or treaty and evidence of its effective date.
- 3.6 Data supporting entry into the Clearinghouse of marks that constitute intellectual property of types other than those set forth in sections 3.2.1-3.2.3 above shall be determined by the registry operator and the Clearinghouse based on the services any given registry operator chooses to provide.
- 3.7 Registrations that include top level extensions such as “icann.org” or “.icann” as the word mark will not be permitted in the Clearinghouse regardless of whether that mark has been registered or it has been otherwise validated or protected (e.g., if a mark existed for icann.org or .icann, neither will not be permitted in the Clearinghouse).
- 3.8 All mark holders seeking to have their marks included in the Clearinghouse will be required to submit a declaration, affidavit, or other sworn statement that the information provided is true and current and has not been supplied for an improper purpose. The mark holder will also be required to attest that it will keep the information supplied to the Clearinghouse current so that if, during the time the mark is included in the Clearinghouse, a registration gets cancelled or is transferred to another entity, or in the case of a court- or Clearinghouse-validated mark the holder abandons use of the mark, the mark holder has an affirmative obligation to notify the Clearinghouse. There will be penalties for failing to keep information current. Moreover, it is anticipated that there will be a process whereby registrations can be

removed from the Clearinghouse if it is discovered that the marks are procured by fraud or if the data is inaccurate.

- 3.9 As an additional safeguard, the data will have to be renewed periodically by any mark holder wishing to remain in the Clearinghouse. Electronic submission should facilitate this process and minimize the cost associated with it. The reason for periodic authentication is to streamline the efficiencies of the Clearinghouse and the information the registry operators will need to process and limit the marks at issue to the ones that are in use.

#### **4. USE OF CLEARINGHOUSE DATA**

- 4.1 All mark holders seeking to have their marks included in the Clearinghouse will have to consent to the use of their information by the Clearinghouse. However, such consent would extend only to use in connection with the stated purpose of the Trademark Clearinghouse Database for Sunrise or Trademark Claims services. The reason for such a provision would be to presently prevent the Clearinghouse from using the data in other ways without permission. There shall be no bar on the Trademark Clearinghouse Service Provider or other third party service providers providing ancillary services on a non-exclusive basis.
- 4.2 In order not to create a competitive advantage, the data in the Trademark Clearinghouse should be licensed to competitors interested in providing ancillary services on equal and non-discriminatory terms and on commercially reasonable terms if the mark holders agree. Accordingly, two licensing options will be offered to the mark holder: (a) a license to use its data for all required features of the Trademark Clearinghouse, with no permitted use of such data for ancillary services either by the Trademark Clearinghouse Service Provider or any other entity; or (b) license to use its data for the mandatory features of the Trademark Clearinghouse and for any ancillary uses reasonably related to the protection of marks in new gTLDs, which would include a license to allow the Clearinghouse to license the use and data in the Trademark Clearinghouse to competitors that also provide those ancillary services. The specific implementation details will be determined, and all terms and conditions related to the provision of such services shall be included in the Trademark Clearinghouse Service Provider's contract with ICANN and subject to ICANN review.
- 4.3 Access by a prospective registrant to verify and research Trademark Claims Notices shall not be considered an ancillary service, and shall be provided at no cost to the Registrant. Misuse of the data by the service providers would be grounds for immediate termination.

## 5. DATA AUTHENTICATION AND VALIDATION GUIDELINES

- 5.1 One core function for inclusion in the Clearinghouse would be to authenticate that the data meets certain minimum criteria. As such, the following minimum criteria are suggested:
- 5.1.1 An acceptable list of data authentication sources, i.e. the web sites of patent and trademark offices throughout the world, third party providers who can obtain information from various trademark offices;
  - 5.1.2 Name, address and contact information of the applicant is accurate, current and matches that of the registered owner of the trademarks listed;
  - 5.1.3 Electronic contact information is provided and accurate;
  - 5.1.4 The registration numbers and countries match the information in the respective trademark office database for that registration number.
- 5.2 For validation of marks by the Clearinghouse that were not protected via a court, statute or treaty, the mark holder shall be required to provide evidence of use of the mark in connection with the bona fide offering for sale of goods or services prior to application for inclusion in the Clearinghouse. Acceptable evidence of use will be a signed declaration and a single specimen of current use, which might consist of labels, tags, containers, advertising, brochures, screen shots, or something else that evidences current use.

## 6. MANDATORY RIGHTS PROTECTION MECHANISMS

All new gTLD registries will be required to use the Trademark Clearinghouse to support its pre-launch or initial launch period rights protection mechanisms (RPMs). These RPMs, at a minimum, must consist of a Trademark Claims service and a Sunrise process.

- 6.1 Trademark Claims service
- 6.1.1 New gTLD Registry Operators must provide Trademark Claims services during an initial launch period for marks in the Trademark Clearinghouse. This launch period must occur for at least the first 60 days that registration is open for general registration.
  - 6.1.2 A Trademark Claims service is intended to provide clear notice to the prospective registrant of the scope of the mark holder's rights in order to minimize the chilling effect on registrants (Trademark Claims Notice). A form that describes the required elements is attached. The specific statement by

prospective registrant warrants that: (i) the prospective registrant has received notification that the mark(s) is included in the Clearinghouse; (ii) the prospective registrant has received and understood the notice; and (iii) to the best of the prospective registrant's knowledge, the registration and use of the requested domain name will not infringe on the rights that are the subject of the notice.

- 6.1.3 The Trademark Claims Notice should provide the prospective registrant access to the Trademark Clearinghouse Database information referenced in the Trademark Claims Notice to enhance understanding of the Trademark rights being claimed by the trademark holder. These links (or other sources) shall be provided in real time without cost to the prospective registrant. Preferably, the Trademark Claims Notice should be provided in the language used for the rest of the interaction with the registrar or registry, but it is anticipated that at the very least in the most appropriate UN-sponsored language (as specified by the prospective registrant or registrar/registry).
- 6.1.4 If the domain name is registered in the Clearinghouse, the registrar (again through an interface with the Clearinghouse) will promptly notify the mark holders(s) of the registration after it is effectuated.
- 6.1.5 The Trademark Clearinghouse Database will be structured to report to registries when registrants are attempting to register a domain name that is considered an "Identical Match" with the mark in the Clearinghouse. "Identical Match" means that the domain name consists of the complete and identical textual elements of the mark. In this regard: (a) spaces contained within a mark that are either replaced by hyphens (and vice versa) or omitted; (b) only certain special characters contained within a trademark are spelled out with appropriate words describing it (@ and &); (c) punctuation or special characters contained within a mark that are unable to be used in a second-level domain name may either be (i) omitted or (ii) replaced by spaces, hyphens or underscores and still be considered identical matches; and (d) no plural and no "marks contained" would qualify for inclusion.

## 6.2 Sunrise service

- 6.2.1 Sunrise registration services must be offered for a minimum of 30 days during the pre-launch phase and notice must be provided to all trademark holders in the Clearinghouse if someone is seeking a sunrise registration. This notice will be provided to holders of marks in the Clearinghouse that are an Identical Match to the name to be registered during Sunrise.
- 6.2.2 Sunrise Registration Process. For a Sunrise service, sunrise eligibility requirements (SERs) will be met as a minimum requirement, verified by Clearinghouse data, and incorporate a Sunrise Dispute Resolution Policy (SDRP).
- 6.2.3 The proposed SERs include: (i) ownership of a mark (that satisfies the criteria in section 7.2 below), (ii) optional registry elected requirements re: international class of goods or services covered by registration; (iii) representation that all provided information is true and correct; and (iv) provision of data sufficient to document rights in the trademark.
- 6.2.4 The proposed SRDP must allow challenges based on at least the following four grounds: (i) at time the challenged domain name was registered, the registrant did not hold a trademark registration of national effect (or regional effect) or the trademark had not been court-validated or protected by statute or treaty; (ii) the domain name is not identical to the mark on which the registrant based its Sunrise registration; (iii) the trademark registration on which the registrant based its Sunrise registration is not of national effect (or regional effect) or the trademark had not been court-validated or protected by statute or treaty; or (iv) the trademark registration on which the domain name registrant based its Sunrise registration did not issue on or before the effective date of the Registry Agreement and was not applied for on or before ICANN announced the applications received.
- 6.2.5 The Clearinghouse will maintain the SERs, validate and authenticate marks, as applicable, and hear challenges.

## 7. PROTECTION FOR MARKS IN CLEARINGHOUSE

The scope of registered marks that must be honored by registries in providing Trademarks Claims services is broader than those that must be honored by registries in Sunrise services.

- 7.1 For Trademark Claims services - Registries must recognize and honor all word marks that have been or are: (i) nationally or regionally registered; (ii) court-validated; or (iii)

specifically protected by a statute or treaty in effect at the time the mark is submitted to the Clearinghouse for inclusion. No demonstration of use is required.

- 7.2 For Sunrise services - Registries must recognize and honor all word marks: (i) nationally or regionally registered and for which proof of use – which can be a declaration and a single specimen of current use – was submitted to, and validated by, the Trademark Clearinghouse; or (ii) that have been court-validated; or (iii) that are specifically protected by a statute or treaty currently in effect and that was in effect on or before 26 June 2008.

## **8. COSTS OF CLEARINGHOUSE**

Costs should be completely borne by the parties utilizing the services. Trademark holders will pay to register the Clearinghouse, and registries will pay for Trademark Claims and Sunrise services. Registrars and others who avail themselves of Clearinghouse services will pay the Clearinghouse directly.

**TRADEMARK NOTICE**

[In English and the language of the registration agreement]

You have received this Trademark Notice because you have applied for a domain name which matches at least one trademark record submitted to the Trademark Clearinghouse.

You may or may not be entitled to register the domain name depending on your intended use and whether it is the same or significantly overlaps with the trademarks listed below.

***Your rights to register this domain name may or may not be protected as noncommercial use or "fair use" by the laws of your country. [in bold italics or all caps]***

Please read the trademark information below carefully, including the trademarks, jurisdictions, and goods and service for which the trademarks are registered. Please be aware that not all jurisdictions review trademark applications closely, so some of the trademark information below may exist in a national or regional registry which does not conduct a thorough or substantive review of trademark rights prior to registration.

***If you have questions, you may want to consult an attorney or legal expert on trademarks and intellectual property for guidance.***

If you continue with this registration, you represent that, you have received and you understand this notice and to the best of your knowledge, your registration and use of the requested domain name will not infringe on the trademark rights listed below. The following [number] Trademarks are listed in the Trademark Clearinghouse:

1. Mark: Jurisdiction: Goods: [click here for more if maximum character count is exceeded] International Class of Goods and Services or Equivalent if applicable: Trademark Registrant: Trademark Registrant Contact:

[with links to the TM registrations as listed in the TM Clearinghouse]

2. Mark: Jurisdiction: Goods: [click here for more if maximum character count is exceeded] International Class of Goods and Services or Equivalent if applicable: Trademark Registrant:

Trademark Registrant Contact:

\*\*\*\*\* [with links to the TM registrations as listed in the TM Clearinghouse]

X. 1. Mark: Jurisdiction: Goods: [click here for more if maximum character count is exceeded] International Class of Goods and Services or Equivalent if applicable: Trademark Registrant: Trademark Registrant Contact:

**UNIFORM RAPID SUSPENSION SYSTEM (“URS”)  
30 MAY 2011**

**DRAFT PROCEDURE**

**1. Complaint**

1.1 Filing the Complaint

- a) Proceedings are initiated by electronically filing with a URS Provider a Complaint outlining the trademark rights and the actions complained of entitling the trademark holder to relief.
- b) Each Complaint must be accompanied by the appropriate fee, which is under consideration. The fees will be non-refundable.
- c) One Complaint is acceptable for multiple related companies against one Registrant, but only if the companies complaining are related. Multiple Registrants can be named in one Complaint only if it can be shown that they are in some way related. There will not be a minimum number of domain names imposed as a prerequisite to filing.

1.2 Contents of the Complaint

The form of the Complaint will be simple and as formulaic as possible. There will be a Form Complaint. The Form Complaint shall include space for the following:

- 1.2.1 Name, email address and other contact information for the Complaining Party (Parties).
- 1.2.2 Name, email address and contact information for any person authorized to act on behalf of Complaining Parties.
- 1.2.3 Name of Registrant (i.e. relevant information available from Whois) and Whois listed available contact information for the relevant domain name(s).
- 1.2.4 The specific domain name(s) that are the subject of the Complaint. For each domain name, the Complainant shall include a copy of the currently available Whois information and a description and copy, if available, of the offending portion of the website content associated with each domain name that is the subject of the Complaint.
- 1.2.5 The specific trademark/service marks upon which the Complaint is based and pursuant to which the Complaining Parties are asserting their rights to them, for which goods and in connection with what services.
- 1.2.6 A statement of the grounds upon which the Complaint is based setting forth facts showing that the Complaining Party is entitled to relief, namely:

1.2.6.1. that the registered domain name is identical or confusingly similar to a word mark: (i) for which the Complainant holds a valid national or regional registration and that is in current use; or (ii) that has been validated through court proceedings; or (iii) that is specifically protected by a statute or treaty in effect at the time the URS complaint is filed.

- a. Use can be shown by demonstrating that evidence of use – which can be a declaration and one specimen of current use in commerce - was submitted to, and validated by, the Trademark Clearinghouse)
- b. Proof of use may also be submitted directly with the URS Complaint.

and

1.2.6.2. that the Registrant has no legitimate right or interest to the domain name; and

1.2.6.3. that the domain was registered and is being used in bad faith.

A non-exclusive list of circumstances that demonstrate bad faith registration and use by the Registrant include:

- a. Registrant has registered or acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of documented out-of pocket costs directly related to the domain name; or
- b. Registrant has registered the domain name in order to prevent the trademark holder or service mark from reflecting the mark in a corresponding domain name, provided that Registrant has engaged in a pattern of such conduct; or
- c. Registrant registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- d. By using the domain name Registrant has intentionally attempted to attract for commercial gain, Internet users to Registrant's web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of Registrant's web site or location or of a product or service on that web site or location.

1.2.7 A box in which the Complainant may submit up to 500 words of explanatory free form text.

1.2.8. An attestation that the Complaint is not being filed for any improper basis and that there is a sufficient good faith basis for filing the Complaint.

## **2. Fees**

2.1 URS Provider will charge fees to the Complainant. Fees are thought to be in the range of USD 300 per proceeding, but will ultimately be set by the Provider.

2.2 A limited “loser pays” model has been adopted for the URS. Complaints listing twenty-six (26) or more disputed domain names will be subject to an Response Fee which will be refundable to the prevailing party. Under no circumstances shall the Response Fee exceed the fee charged to the Complainant.

## **3. Administrative Review**

3.1 Complaints will be subjected to an initial administrative review by the URS Provider for compliance with the filing requirements. This is a review to determine that the Complaint contains all of the necessary information, and is not a determination as to whether a *prima facie* case has been established.

3.2 The Administrative Review shall be conducted within two (2) business days of submission of the Complaint to the URS Provider.

3.3 Given the rapid nature of this Procedure, and the intended low level of required fees, there will be no opportunity to correct inadequacies in the filing requirements.

3.4 If a Complaint is deemed non-compliant with filing requirements, the Complaint will be dismissed without prejudice to the Complainant filing a new complaint. The initial filing fee shall not be refunded in these circumstances.

## **4. Notice and Locking of Domain**

4.1 Upon completion of the Administrative Review, the URS Provider must immediately notify the registry operator (via email) (“Notice of Complaint”) after the Complaint has been deemed compliant with the filing requirements. Within 24 hours of receipt of the Notice of Complaint from the URS Provider, the registry operator shall “lock” the domain, meaning the registry shall restrict all changes to the registration data, including transfer and deletion of the domain names, but the name will continue to resolve. The registry operator will notify the URS Provider immediately upon locking the domain name (“Notice of Lock”).

4.2 Within 24 hours after receiving Notice of Lock from the registry operator, the URS Provider shall notify the Registrant of the Complaint, sending a hard copy of the Notice of Complaint to the addresses listed in the Whois contact information, and providing an electronic copy of the Complaint, advising of the locked status, as well as the potential

effects if the Registrant fails to respond and defend against the Complaint. Notices must be clear and understandable to Registrants located globally. The Notice of Complaint shall be in English and translated by the Provider into the predominant language used in the registrant's country or territory.

- 4.3 All Notices to the Registrant shall be sent through email, fax (where available) and postal mail. The Complaint and accompanying exhibits, if any, shall be served electronically.
- 4.4 The URS Provider shall also electronically notify the registrar of record for the domain name at issue via the addresses the registrar has on file with ICANN.

## **5. The Response**

- 5.1 A Registrant will have 14 calendar days from the date the URS Provider sent its Notice of Complaint to the Registrant to electronically file a Response with the URS Provider. Upon receipt, the Provider will electronically send a copy of the Response, and accompanying exhibits, if any, to the Complainant.
- 5.2 No filing fee will be charged if the Registrant files its Response prior to being declared in default or not more than thirty (30) days following a Determination. For Responses filed more than thirty (30) days after a Determination, the Registrant should pay a reasonable non-refundable fee for re-examination, plus a Response Fee as set forth in section 2.2 above if the Complaint lists twenty-six (26) or more disputed domain names against the same registrant. The Response Fee will be refundable to the prevailing party.
- 5.3 Upon request by the Registrant, a limited extension of time to respond may be granted by the URS Provider if there is a good faith basis for doing so. In no event shall the extension be for more than seven (7) calendar days.
- 5.4 The Response shall be no longer than 2,500 words, excluding attachments, and the content of the Response should include the following:
  - 5.4.1 Confirmation of Registrant data.
  - 5.4.2 Specific admission or denial of each of the grounds upon which the Complaint is based.
  - 5.4.3 Any defense which contradicts the Complainant's claims.
  - 5.4.4 A statement that the contents are true and accurate.
- 5.5 In keeping with the intended expedited nature of the URS and the remedy afforded to a successful Complainant, affirmative claims for relief by the Registrant will not be permitted except for an allegation that the Complainant has filed an abusive Complaint.
- 5.6 Once the Response is filed, and the URS Provider determines that the Response is compliant with the filing requirements of a Response (which shall be on the same day),

the Complaint, Response and supporting materials will immediately be sent to a qualified Examiner, selected by the URS Provider, for review and Determination. All materials submitted are considered by the Examiner.

- 5.7 The Response can contain any facts refuting the claim of bad faith registration by setting out any of the following circumstances:
- 5.7.1 Before any notice to Registrant of the dispute, Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
  - 5.7.2 Registrant (as an individual, business or other organization) has been commonly known by the domain name, even if Registrant has acquired no trademark or service mark rights; or
  - 5.7.3 Registrant is making a legitimate or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Such claims, if found by the Examiner to be proved based on its evaluation of all evidence, shall result in a finding in favor of the Registrant.

- 5.8 The Registrant may also assert Defenses to the Complaint to demonstrate that the Registrant's use of the domain name is not in bad faith by showing, for example, one of the following:
- 5.8.1 The domain name is generic or descriptive and the Registrant is making fair use of it.
  - 5.8.2 The domain name sites are operated solely in tribute to or in criticism of a person or business that is found by the Examiner to be fair use.
  - 5.8.3 Registrant's holding of the domain name is consistent with an express term of a written agreement entered into by the disputing Parties and that is still in effect.
  - 5.8.4 The domain name is not part of a wider pattern or series of abusive registrations because the Domain Name is of a significantly different type or character to other domain names registered by the Registrant.
- 5.9 Other factors for the Examiner to consider:
- 5.9.1 Trading in domain names for profit, and holding a large portfolio of domain names, are of themselves not indicia of bad faith under the URS. Such conduct, however, may be abusive in a given case depending on the circumstances of the dispute. The Examiner must review each case on its merits.
  - 5.9.2 Sale of traffic (i.e. connecting domain names to parking pages and earning click-per-view revenue) does not in and of itself constitute bad faith under the URS.

Such conduct, however, may be abusive in a given case depending on the circumstances of the dispute. The Examiner will take into account:

5.9.2.1. the nature of the domain name;

5.9.2.2. the nature of the advertising links on any parking page associated with the domain name; and

5.9.2.3. that the use of the domain name is ultimately the Registrant's responsibility

## **6. Default**

- 6.1 If at the expiration of the 14-day answer period (or extended period if granted), the Registrant does not submit an answer, the Complaint proceeds to Default.
- 6.2 In either case, the Provider shall provide Notice of Default via email to the Complainant and Registrant, and via mail and fax to Registrant. During the Default period, the Registrant will be prohibited from changing content found on the site to argue that it is now a legitimate use and will also be prohibited from changing the Whois information.
- 6.3 All Default cases proceed to Examination for review on the merits of the claim.
- 6.4 If after Examination in Default cases, the Examiner rules in favor of Complainant, Registrant shall have the right to seek relief from Default via de novo review by filing a Response at any time up to six months after the date of the Notice of Default. The Registrant will also be entitled to request an extension of an additional six months if the extension is requested before the expiration of the initial six-month period.
- 6.5 If a Response is filed after: (i) the Respondent was in Default (so long as the Response is filed in accordance with 6.4 above); and (ii) proper notice is provided in accordance with the notice requirements set forth above, the domain name shall again resolve to the original IP address as soon as practical, but shall remain locked as if the Response had been filed in a timely manner before Default. The filing of a Response after Default is not an appeal; the case is considered as if responded to in a timely manner.
- 6.5 If after Examination in Default case, the Examiner rules in favor of Registrant, the Provider shall notify the Registry Operator to unlock the name and return full control of the domain name registration to the Registrant.

## **7. Examiners**

- 7.1 One Examiner selected by the Provider will preside over a URS proceeding.
- 7.2 Examiners should have demonstrable relevant legal background, such as in trademark law, and shall be trained and certified in URS proceedings. Specifically, Examiners shall be provided with instructions on the URS elements and defenses and how to conduct the examination of a URS proceeding.

- 7.3 Examiners used by any given URS Provider shall be rotated to the extent feasible to avoid “forum or examiner shopping.” URS Providers are strongly encouraged to work equally with all certified Examiners, with reasonable exceptions (such as language needs, non-performance, or malfeasance) to be determined on a case by case analysis.

## **8. Examination Standards and Burden of Proof**

- 8.1 The standards that the qualified Examiner shall apply when rendering its Determination are whether:
- 8.1.2 The registered domain name is identical or confusingly similar to a word mark: (i) for which the Complainant holds a valid national or regional registration and that is in current use; or (ii) that has been validated through court proceedings; or (iii) that is specifically protected by a statute or treaty currently in effect and that was in effect at the time the URS Complaint is filed; and
- 8.1.2.1 Use can be shown by demonstrating that evidence of use – which can be a declaration and one specimen of current use – was submitted to, and validated by, the Trademark Clearinghouse.
- 8.1.2.2 Proof of use may also be submitted directly with the URS Complaint.
- 8.1.2 The Registrant has no legitimate right or interest to the domain name; and
- 8.1.3 The domain was registered and is being used in a bad faith.
- 8.2 The burden of proof shall be clear and convincing evidence.
- 8.3 For a URS matter to conclude in favor of the Complainant, the Examiner shall render a Determination that there is no genuine issue of material fact. Such Determination may include that: (i) the Complainant has rights to the name; and (ii) the Registrant has no rights or legitimate interest in the name. This means that the Complainant must present adequate evidence to substantiate its trademark rights in the domain name (e.g., evidence of a trademark registration and evidence that the domain name was registered and is being used in bad faith in violation of the URS).
- 8.4 If the Examiner finds that the Complainant has not met its burden, or that genuine issues of material fact remain in regards to any of the elements, the Examiner will reject the Complaint under the relief available under the URS. That is, the Complaint shall be dismissed if the Examiner finds that evidence was presented or is available to the Examiner to indicate that the use of the domain name in question is a non-infringing use or fair use of the trademark.
- 8.5 Where there is any genuine contestable issue as to whether a domain name registration and use of a trademark are in bad faith, the Complaint will be denied, the URS proceeding will be terminated without prejudice, e.g., a UDRP, court proceeding or

another URS may be filed. The URS is not intended for use in any proceedings with open questions of fact, but only clear cases of trademark abuse.

- 8.6 To restate in another way, if the Examiner finds that all three standards are satisfied by clear and convincing evidence and that there is no genuine contestable issue, then the Examiner shall issue a Determination in favor of the Complainant. If the Examiner finds that any of the standards have not been satisfied, then the Examiner shall deny the relief requested, thereby terminating the URS proceeding without prejudice to the Complainant to proceed with an action in court of competent jurisdiction or under the UDRP.

## **9. Determination**

- 9.1 There will be no discovery or hearing; the evidence will be the materials submitted with the Complaint and the Response, and those materials will serve as the entire record used by the Examiner to make a Determination.
- 9.2 If the Complainant satisfies the burden of proof, the Examiner will issue a Determination in favor of the Complainant. The Determination will be published on the URS Provider's website. However, there should be no other preclusive effect of the Determination other than the URS proceeding to which it is rendered.
- 9.3 If the Complainant does not satisfy the burden of proof, the URS proceeding is terminated and full control of the domain name registration shall be returned to the Registrant.
- 9.4 Determinations resulting from URS proceedings will be published by the service provider in a format specified by ICANN.
- 9.5 Determinations shall also be emailed by the URS Provider to the Registrant, the Complainant, the Registrar, and the Registry Operator, and shall specify the remedy and required actions of the registry operator to comply with the Determination.
- 9.6 To conduct URS proceedings on an expedited basis, examination should begin immediately upon the earlier of the expiration of a fourteen (14) day Response period (or extended period if granted), or upon the submission of the Response. A Determination shall be rendered on an expedited basis, with the stated goal that it be rendered within three (3) business days from when Examination began. Absent extraordinary circumstances, however, Determinations must be issued no later than five (5) days after the Response is filed. Implementation details will be developed to accommodate the needs of service providers once they are selected. (The tender offer for potential service providers will indicate that timeliness will be a factor in the award decision.)

## **10. Remedy**

- 10.1 If the Determination is in favor of the Complainant, the decision shall be immediately transmitted to the registry operator.

- 10.2 Immediately upon receipt of the Determination, the registry operator shall suspend the domain name, which shall remain suspended for the balance of the registration period and would not resolve to the original web site. The nameservers shall be redirected to an informational web page provided by the URS Provider about the URS. The URS Provider shall not be allowed to offer any other services on such page, nor shall it directly or indirectly use the web page for advertising purposes (either for itself or any other third party). The Whois for the domain name shall continue to display all of the information of the original Registrant except for the redirection of the nameservers. In addition, the Whois shall reflect that the domain name will not be able to be transferred, deleted or modified for the life of the registration.
- 10.2 There shall be an option for a successful Complainant to extend the registration period for one additional year at commercial rates.
- 10.3 No other remedies should be available in the event of a Determination in favor of the Complainant.

## **11. Abusive Complaints**

- 11.1 The URS shall incorporate penalties for abuse of the process by trademark holders.
- 11.2 In the event a party is deemed to have filed two (2) abusive Complaints, or one (1) “deliberate material falsehood,” that party shall be barred from utilizing the URS for one-year following the date of issuance of a Determination finding a complainant to have: (i) filed its second abusive complaint; or (ii) filed a deliberate material falsehood.
- 11.3 A Complaint may be deemed abusive if the Examiner determines:
- 11.3.1 it was presented solely for improper purpose such as to harass, cause unnecessary delay, or needlessly increase the cost of doing business; and
- 11.3.2 (i) the claims or other assertions were not warranted by any existing law or the URS standards; or (ii) the factual contentions lacked any evidentiary support
- 11.4 An Examiner may find that Complaint contained a deliberate material falsehood if it contained an assertion of fact, which at the time it was made, was made with the knowledge that it was false and which, if true, would have an impact on the outcome on the URS proceeding.
- 11.5 Two findings of “deliberate material falsehood” shall permanently bar the party from utilizing the URS.
- 11.6 URS Providers shall be required to develop a process for identifying and tracking barred parties, and parties whom Examiners have determined submitted abusive complaints or deliberate material falsehoods.

- 11.7 The dismissal of a complaint for administrative reasons or a ruling on the merits, in itself, shall not be evidence of filing an abusive complaint.
- 11.8 A finding that filing of a complaint was abusive or contained a deliberate materially falsehood can be appealed solely on the grounds that an Examiner abused his/her discretion, or acted in an arbitrary or capricious manner.

**12. Appeal**

- 12.1 Either party shall have a right to seek a de novo appeal of the Determination based on the existing record within the URS proceeding for a reasonable fee to cover the costs of the appeal. An appellant must identify the specific grounds on which the party is appealing, including why the appellant claims the Examiner's Determination was incorrect.
- 12.2 The fees for an appeal shall be borne by the appellant. A limited right to introduce new admissible evidence that is material to the Determination will be allowed upon payment of an additional fee, provided the evidence clearly pre-dates the filing of the Complaint. The Appeal Panel, to be selected by the Provider, may request, in its sole discretion, further statements or documents from either of the Parties.
- 12.3 Filing an appeal shall not change the domain name's resolution. For example, if the domain name no longer resolves to the original nameservers because of a Determination in favor of the Complainant, the domain name shall continue to point to the informational page provided by the URS Provider. If the domain name resolves to the original nameservers because of a Determination in favor of the registrant, it shall continue to resolve during the appeal process.
- 12.4 An appeal must be filed within 14 days after a Determination is issued and any Response must be filed 14 days after an appeal is filed.
- 12.5 If a respondent has sought relief from Default by filing a Response within six months (or the extended period if applicable) of issuance of initial Determination, an appeal must be filed within 14 days from date the second Determination is issued and any Response must be filed 14 days after the appeal is filed.
- 12.6 Notice of appeal and findings by the appeal panel shall be sent by the URS Provider via e-mail to the Registrant, the Complainant, the Registrar, and the Registry Operator.
- 12.7 The Providers' rules and procedures for appeals, other than those stated above, shall apply.

**13. Other Available Remedies**

The URS Determination shall not preclude any other remedies available to the appellant, such as UDRP (if appellant is the Complainant), or other remedies as may be available in a court of competition jurisdiction. A URS Determination for or against a party shall not prejudice the

party in UDRP or any other proceedings.

**14. Review of URS**

A review of the URS procedure will be initiated one year after the first Examiner Determination is issued. Upon completion of the review, a report shall be published regarding the usage of the procedure, including statistical information, and posted for public comment on the usefulness and effectiveness of the procedure.

**TRADEMARK POST-DELEGATION DISPUTE RESOLUTION PROCEDURE (TRADEMARK PDDRP)**  
**30 MAY 2011**

**1. Parties to the Dispute**

The parties to the dispute will be the trademark holder and the gTLD registry operator. ICANN shall not be a party.

**2. Applicable Rules**

2.1 This procedure is intended to cover Trademark post-delegation dispute resolution proceedings generally. To the extent more than one Trademark PDDRP provider ("Provider") is selected to implement the Trademark PDDRP, each Provider may have additional rules that must be followed when filing a Complaint. The following are general procedures to be followed by all Providers.

2.2 In the Registry Agreement, the registry operator agrees to participate in all post-delegation procedures and be bound by the resulting Determinations.

**3. Language**

3.1 The language of all submissions and proceedings under the procedure will be English.

3.2 Parties may submit supporting evidence in their original language, provided and subject to the authority of the Expert Panel to determine otherwise, that such evidence is accompanied by an English translation of all relevant text.

**4. Communications and Time Limits**

4.1 All communications with the Provider must be submitted electronically.

4.2 For the purpose of determining the date of commencement of a time limit, a notice or other communication will be deemed to have been received on the day that it is transmitted to the appropriate contact person designated by the parties.

4.3 For the purpose of determining compliance with a time limit, a notice or other communication will be deemed to have been sent, made or transmitted on the day that it is dispatched.

4.4 For the purpose of calculating a period of time under this procedure, such period will begin to run on the day following the date of receipt of a notice or other communication.

4.5 All references to day limits shall be considered as calendar days unless otherwise specified.

## 5. Standing

- 5.1 The mandatory administrative proceeding will commence when a third-party complainant (“Complainant”) has filed a Complaint with a Provider asserting that the Complainant is a trademark holder (which may include either registered or unregistered marks as defined below) claiming that one or more of its marks have been infringed, and thereby the Complainant has been harmed, by the registry operator’s manner of operation or use of the gTLD.
- 5.2 Before proceeding to the merits of a dispute, and before the Respondent is required to submit a substantive Response, or pay any fees, the Provider shall appoint a special one-person Panel to perform an initial “threshold” review (“Threshold Review Panel”).

## 6. Standards

For purposes of these standards, “registry operator” shall include entities directly or indirectly controlling, controlled by or under common control with a registry operator, whether by ownership or control of voting securities, by contract or otherwise where ‘control’ means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether by ownership or control of voting securities, by contract or otherwise.

### 6.1 Top Level:

A complainant must assert and prove, by clear and convincing evidence, that the registry operator’s affirmative conduct in its operation or use of its gTLD string that is identical or confusingly similar to the complainant’s mark, causes or materially contributes to the gTLD doing one of the following:

*(a) taking unfair advantage of the distinctive character or the reputation of the complainant's mark; or*

*(b) impairing the distinctive character or the reputation of the complainant's mark; or*

*(c) creating a likelihood of confusion with the complainant's mark.*

An example of infringement at the top-level is where a TLD string is identical to a trademark and then the registry operator holds itself out as the beneficiary of the mark.

### 6.2 Second Level

Complainants are required to prove, by clear and convincing evidence that, through the registry operator’s affirmative conduct:

*(a) there is a substantial pattern or practice of specific bad faith intent by the registry operator to profit from the sale of trademark infringing domain names; and*

*(b) the registry operator's bad faith intent to profit from the systematic registration of domain names within the gTLD that are identical or confusingly similar to the complainant's mark, which:*

*(i) takes unfair advantage of the distinctive character or the reputation of the complainant's mark; or*

*(ii) impairs the distinctive character or the reputation of the complainant's mark, or*

*(iii) creates a likelihood of confusion with the complainant's mark.*

In other words, it is not sufficient to show that the registry operator is on notice of possible trademark infringement through registrations in the gTLD. The registry operator is not liable under the PDDRP solely because: (i) infringing names are in its registry; or (ii) the registry operator knows that infringing names are in its registry; or (iii) the registry operator did not monitor the registrations within its registry.

A registry operator is not liable under the PDDRP for any domain name registration that: (i) is registered by a person or entity that is unaffiliated with the registry operator; (ii) is registered without the direct or indirect encouragement, inducement, initiation or direction of any person or entity affiliated with the registry operator; and (iii) provides no direct or indirect benefit to the registry operator other than the typical registration fee (which may include other fees collected incidental to the registration process for value added services such enhanced registration security).

An example of infringement at the second level is where a registry operator has a pattern or practice of actively and systematically encouraging registrants to register second level domain names and to take unfair advantage of the trademark to the extent and degree that bad faith is apparent. Another example of infringement at the second level is where a registry operator has a pattern or practice of acting as the registrant or beneficial user of infringing registrations, to monetize and profit in bad faith.

## **7. Complaint**

### **7.1 Filing:**

The Complaint will be filed electronically. Once the Administrative Review has been completed and the Provider deems the Complaint be in compliance, the Provider will electronically serve the Complaint and serve a paper notice on the registry operator that is the subject of the Complaint ("Notice of Complaint") consistent with the contact information listed in the Registry Agreement.

### **7.2 Content:**

**7.2.1** The name and contact information, including address, phone, and email address, of the Complainant, and, to the best of Complainant's knowledge, the name and address of the current owner of the registration.

- 7.2.2 The name and contact information, including address, phone, and email address of any person authorized to act on behalf of Complainant.
- 7.2.3 A statement of the nature of the dispute, and any relevant evidence, which shall include:
- (a) The particular legal rights claim being asserted, the marks that form the basis for the dispute and a short and plain statement of the basis upon which the Complaint is being filed.
  - (b) A detailed explanation of how the Complainant's claim meets the requirements for filing a claim pursuant to that particular ground or standard.
  - (c) A detailed explanation of the validity of the Complaint and why the Complainant is entitled to relief.
  - (d) A statement that the Complainant has at least 30 days prior to filing the Complaint notified the registry operator in writing of: (i) its specific concerns and specific conduct it believes is resulting in infringement of Complainant's trademarks and (ii) its willingness to meet to resolve the issue.
  - (e) An explanation of how the mark is used by the Complainant (including the type of goods/services, period and territory of use – including all on-line usage) or otherwise protected by statute, treaty or has been validated by a court or the Clearinghouse.
  - (f) Copies of any documents that the Complainant considers to evidence its basis for relief, including evidence of current use of the Trademark at issue in the Complaint and domain name registrations.
  - (g) A statement that the proceedings are not being brought for any improper purpose.
  - (h) A statement describing how the registration at issue has harmed the trademark owner.
- 7.3 Complaints will be limited 5,000 words and 20 pages, excluding attachments, unless the Provider determines that additional material is necessary.
- 7.4 At the same time the Complaint is filed, the Complainant will pay a non-refundable filing fee in the amount set in accordance with the applicable Provider rules. In the event that the filing fee is not paid within 10 days of the receipt of the Complaint by the Provider, the Complaint will be dismissed without prejudice.

**8. Administrative Review of the Complaint**

- 8.1 All Complaints will be reviewed by the Provider within five (5) business days of submission to the Provider to determine whether the Complaint contains all necessary information and complies with the procedural rules.
- 8.2 If the Provider finds that the Complaint complies with procedural rules, the Complaint will be deemed filed, and the proceedings will continue to the Threshold Review. If the Provider finds that the Complaint does not comply with procedural rules, it will electronically notify the Complainant of such non-compliance and provide the Complainant five (5) business days to submit an amended Complaint. If the Provider does not receive an amended Complaint within the five (5) business days provided, it will dismiss the Complaint and close the proceedings without prejudice to the Complainant's submission of a new Complaint that complies with procedural rules. Filing fees will not be refunded.
- 8.3 If deemed compliant, the Provider will electronically serve the Complaint on the registry operator and serve the Notice of Complaint consistent with the contact information listed in the Registry Agreement.

**9. Threshold Review**

- 9.1 Provider shall establish a Threshold Review Panel, consisting of one panelist selected by the Provider, for each proceeding within five (5) business days after completion of Administrative Review and the Complaint has been deemed compliant with procedural rules.
- 9.2 The Threshold Review Panel shall be tasked with determining whether the Complainant satisfies the following criteria:
- 9.2.1 The Complainant is a holder of a word mark that: (i) is nationally or regionally registered and that is in current use; or (ii) has been validated through court proceedings; or (iii) that is specifically protected by a statute or treaty at the time the PDDRP complaint is filed;
- 9.2.1.1 Use can be shown by demonstrating that evidence of use – which can be a declaration and one specimen of current use – was submitted to, and validated by, the Trademark Clearinghouse
- 9.2.1.2 Proof of use may also be submitted directly with the Complaint.
- 9.2.2 The Complainant has asserted that it has been materially harmed as a result of trademark infringement;
- 9.2.3 The Complainant has asserted facts with sufficient specificity that, if everything the Complainant asserted is true, states a claim under the Top Level Standards herein
- OR

The Complainant has asserted facts with sufficient specificity that, if everything the Complainant asserted is true, states a claim under the Second Level Standards herein;

- 9.2.4 The Complainant has asserted that: (i) at least 30 days prior to filing the Complaint the Complainant notified the registry operator in writing of its specific concerns and specific conduct it believes is resulting in infringement of Complainant's trademarks, and its willingness to meet to resolve the issue; (ii) whether the registry operator responded to the Complainant's notice of specific concerns; and (iii) if the registry operator did respond, that the Complainant attempted to engage in good faith discussions to resolve the issue prior to initiating the PDDRP.
- 9.3 Within ten (10) business days of date Provider served Notice of Complaint, the registry operator shall have the opportunity, but is not required, to submit papers to support its position as to the Complainant's standing at the Threshold Review stage. If the registry operator chooses to file such papers, it must pay a filing fee.
- 9.4 If the registry operator submits papers, the Complainant shall have ten (10) business days to submit an opposition.
- 9.5 The Threshold Review Panel shall have ten (10) business days from due date of Complainant's opposition or the due date of the registry operator's papers if none were filed, to issue Threshold Determination.
- 9.6 Provider shall electronically serve the Threshold Determination on all parties.
- 9.7 If the Complainant has not satisfied the Threshold Review criteria, the Provider will dismiss the proceedings on the grounds that the Complainant lacks standing and declare that the registry operator is the prevailing party.
- 9.8 If the Threshold Review Panel determines that the Complainant has standing and satisfied the criteria then the Provider will commence the proceedings on the merits.

## **10. Response to the Complaint**

- 10.1 The registry operator must file a Response to each Complaint within forty-five (45) days after the date of the Threshold Review Panel Declaration.
- 10.2 The Response will comply with the rules for filing of a Complaint and will contain the name and contact information for the registry operator, as well as a point-by-point response to the statements made in the Complaint.
- 10.3 The Response must be filed with the Provider and the Provider must serve it upon the Complainant in electronic form with a hard-copy notice that it has been served.

- 10.4 Service of the Response will be deemed effective, and the time will start to run for a Reply, upon confirmation that the electronic Response and hard-copy notice of the Response was sent by the Provider to the addresses provided by the Complainant.
- 10.5 If the registry operator believes the Complaint is without merit, it will affirmatively plead in its Response the specific grounds for the claim.

**11. Reply**

- 11.1 The Complainant is permitted ten (10) days from Service of the Response to submit a Reply addressing the statements made in the Response showing why the Complaint is not “without merit.” A Reply may not introduce new facts or evidence into the record, but shall only be used to address statements made in the Response. Any new facts or evidence introduced in a Response shall be disregarded by the Expert Panel.
- 11.2 Once the Complaint, Response and Reply (as necessary) are filed and served, a Panel will be appointed and provided with all submissions.

**12. Default**

- 12.1 If the registry operator fails to respond to the Complaint, it will be deemed to be in default.
- 12.2 Limited rights to set aside the finding of default will be established by the Provider, but in no event will they be permitted absent a showing of good cause to set aside the finding of default.
- 12.3 The Provider shall provide notice of Default via email to the Complainant and registry operator.
- 12.4 All Default cases shall proceed to Expert Determination on the merits.

**13. Expert Panel**

- 13.1 The Provider shall establish an Expert Panel within 21 days after receiving the Reply, or if no Reply is filed, within 21 days after the Reply was due to be filed.
- 13.2 The Provider appoint a one-person Expert Panel, unless any party requests a three-member Expert Panel. No Threshold Panel member shall serve as an Expert Panel member in the same Trademark PDDRP proceeding.
- 13.3 In the case where either party requests a three-member Expert Panel, each party (or each side of the dispute if a matter has been consolidated) shall select an Expert and the two selected Experts shall select the third Expert Panel member. Such selection shall be made pursuant to the Providers rules or procedures. Trademark PDDRP panelists within a Provider shall be rotated to the extent feasible.

- 13.4 Expert Panel member must be independent of the parties to the post-delegation challenge. Each Provider will follow its adopted procedures for requiring such independence, including procedures for challenging and replacing a panelist for lack of independence.

**14. Costs**

- 14.1 The Provider will estimate the costs for the proceedings that it administers under this procedure in accordance with the applicable Provider rules. Such costs will be estimated to cover the administrative fees of the Provider, the Threshold Review Panel and the Expert Panel, and are intended to be reasonable.
- 14.2 The Complainant shall be required to pay the filing fee as set forth above in the “Complaint” section, and shall be required to submit the full amount of the Provider estimated administrative fees, the Threshold Review Panel fees and the Expert Panel fees at the outset of the proceedings. Fifty percent of that full amount shall be in cash (or cash equivalent) to cover the Complainant’s share of the proceedings and the other 50% shall be in either cash (or cash equivalent), or in bond, to cover the registry operator’s share if the registry operator prevails.
- 14.3 If the Panel declares the Complainant to be the prevailing party, the registry operator is required to reimburse Complainant for all Panel and Provider fees incurred. Failure to do so shall be deemed a violation of the Trademark PDDRP and a breach of the Registry Agreement, subject to remedies available under the Agreement up to and including termination.

**15. Discovery**

- 15.1 Whether and to what extent discovery is allowed is at the discretion of the Panel, whether made on the Panel’s own accord, or upon request from the Parties.
- 15.2 If permitted, discovery will be limited to that for which each Party has a substantial need.
- 15.3 In extraordinary circumstances, the Provider may appoint experts to be paid for by the Parties, request live or written witness testimony, or request limited exchange of documents.
- 15.4 At the close of discovery, if permitted by the Expert Panel, the Parties will make a final evidentiary submission, the timing and sequence to be determined by the Provider in consultation with the Expert Panel.

**16. Hearings**

- 16.1 Disputes under this Procedure will be resolved without a hearing unless either party requests a hearing or the Expert Panel determines on its own initiative that one is necessary.

- 16.2 If a hearing is held, videoconferences or teleconferences should be used if at all possible. If not possible, then the Expert Panel will select a place for hearing if the Parties cannot agree.
- 16.3 Hearings should last no more than one day, except in the most extraordinary circumstances.
- 16.4 All dispute resolution proceedings will be conducted in English.

**17. Burden of Proof**

The Complainant bears the burden of proving the allegations in the Complaint; the burden must be by clear and convincing evidence.

**18. Remedies**

- 18.1 Since registrants are not a party to the action, a recommended remedy cannot take the form of deleting, transferring or suspending registrations (except to the extent registrants have been shown to be officers, directors, agents, employees, or entities under common control with a registry operator).
  - 18.2 Recommended remedies will not include monetary damages or sanctions to be paid to any party other than fees awarded pursuant to section 14.
  - 18.3 The Expert Panel may recommend a variety of graduated enforcement tools against the registry operator if it the Expert Panel determines that the registry operator is liable under this Trademark PDDRP, including:
    - 18.3.1 Remedial measures for the registry to employ to ensure against allowing future infringing registrations, which may be in addition to what is required under the registry agreement, except that the remedial measures shall not:
      - (a) Require the Registry Operator to monitor registrations not related to the names at issue in the PDDRP proceeding; or
      - (b) Direct actions by the registry operator that are contrary to those required under the Registry Agreement;
    - 18.3.2 Suspension of accepting new domain name registrations in the gTLD until such time as the violation(s) identified in the Determination is(are) cured or a set period of time;
- OR,
- 18.3.3 In extraordinary circumstances where the registry operator acted with malice, providing for the termination of a Registry Agreement.

- 18.4 In making its recommendation of the appropriate remedy, the Expert Panel will consider the ongoing harm to the Complainant, as well as the harm the remedies will create for other, unrelated, good faith domain name registrants operating within the gTLD.
- 18.5 The Expert Panel may also determine whether the Complaint was filed “without merit,” and, if so, award the appropriate sanctions on a graduated scale, including:
  - 18.5.1 Temporary bans from filing Complaints;
  - 18.5.2 Imposition of costs of registry operator, including reasonable attorney fees; and
  - 18.5.3 Permanent bans from filing Complaints after being banned temporarily.
- 18.6 Imposition of remedies shall be at the discretion of ICANN, but absent extraordinary circumstances, those remedies will be in line with the remedies recommended by the Expert Panel.

**19. The Expert Panel Determination**

- 19.1 The Provider and the Expert Panel will make reasonable efforts to ensure that the Expert Determination is issued within 45 days of the appointment of the Expert Panel and absent good cause, in no event later than 60 days after the appointment of the Expert Panel.
- 19.2 The Expert Panel will render a written Determination. The Expert Determination will state whether or not the Complaint is factually founded and provide the reasons for that Determination. The Expert Determination should be publicly available and searchable on the Provider’s web site.
- 19.3 The Expert Determination may further include a recommendation of specific remedies. Costs and fees to the Provider, to the extent not already paid, will be paid within thirty (30) days of the Expert Panel’s Determination.
- 19.4 The Expert Determination shall state which party is the prevailing party.
- 19.5 While the Expert Determination that a registry operator is liable under the standards of the Trademark PDDRP shall be taken into consideration, ICANN will have the authority to impose the remedies, if any, that ICANN deems appropriate given the circumstances of each matter.

**20. Appeal of Expert Determination**

- 20.1 Either party shall have a right to seek a de novo appeal of the Expert Determination of liability or recommended remedy based on the existing record within the Trademark PDDRP proceeding for a reasonable fee to cover the costs of the appeal.
- 20.2 An appeal must be filed with the Provider and served on all parties within 20 days after an Expert Determination is issued and a response to the appeal must be filed within 20

days after the appeal. Manner and calculation of service deadlines shall in consistent with those set forth in Section 4 above, "Communication and Time Limits."

- 20.3 A three-member Appeal Panel is to be selected by the Provider, but no member of the Appeal Panel shall also have been an Expert Panel member.
- 20.4 The fees for an appeal in the first instance shall be borne by the appellant.
- 20.5 A limited right to introduce new admissible evidence that is material to the Determination will be allowed upon payment of an additional fee, provided the evidence clearly pre-dates the filing of the Complaint.
- 20.6 The Appeal Panel may request at its sole discretion, further statements or evidence from any party regardless of whether the evidence pre-dates the filing of the Complaint if the Appeal Panel determines such evidence is relevant.
- 20.7 The prevailing party shall be entitled to an award of costs of appeal.
- 20.8 The Providers rules and procedures for appeals, other than those stated above, shall apply.

## **21. Challenge of a Remedy**

- 21.1 ICANN shall not implement a remedy for violation of the Trademark PDDRP for at least 20 days after the issuance of an Expert Determination, providing time for an appeal to be filed.
- 21.2 If an appeal is filed, ICANN shall stay its implementation of a remedy pending resolution of the appeal.
- 21.3 If ICANN decides to implement a remedy for violation of the Trademark PDDRP, ICANN will wait ten (10) business days (as observed in the location of its principal office) after notifying the registry operator of its decision. ICANN will then implement the decision unless it has received from the registry operator during that ten (10) business-day period official documentation that the registry operator has either: (a) commenced a lawsuit against the Complainant in a court of competent jurisdiction challenging the Expert Determination of liability against the registry operator, or (b) challenged the intended remedy by initiating dispute resolution under the provisions of its Registry Agreement. If ICANN receives such documentation within the ten (10) business day period, it will not seek to implement the remedy in furtherance of the Trademark PDDRP until it receives: (i) evidence of a resolution between the Complainant and the registry operator; (ii) evidence that registry operator's lawsuit against Complainant has been dismissed or withdrawn; or (iii) a copy of an order from the dispute resolution provider selected pursuant to the Registry Agreement dismissing the dispute against ICANN whether by reason of agreement of the parties or upon determination of the merits.

- 21.4 The registry operator may challenge ICANN's imposition of a remedy imposed in furtherance of an Expert Determination that the registry operator is liable under the PDDRP, to the extent a challenge is warranted, by initiating dispute resolution under the provisions of its Registry Agreement. Any arbitration shall be determined in accordance with the parties' respective rights and duties under the Registry Agreement. Neither the Expert Determination nor the decision of ICANN to implement a remedy is intended to prejudice the registry operator in any way in the determination of the arbitration dispute. Any remedy involving a termination of the Registry Agreement must be according to the terms and conditions of the termination provision of the Registry Agreement.
- 21.5 Nothing herein shall be deemed to prohibit ICANN from imposing remedies at any time and of any nature it is otherwise entitled to impose for a registry operator's non-compliance with its Registry Agreement.

**22. Availability of Court or Other Administrative Proceedings**

- 22.1 The Trademark PDDRP is not intended as an exclusive procedure and does not preclude individuals from seeking remedies in courts of law, including, as applicable, review of an Expert Determination as to liability.
- 22.2 In those cases where a Party submits documented proof to the Provider that a Court action involving the same Parties, facts and circumstances as the Trademark PDDRP was instituted prior to the filing date of the Complaint in the Trademark PDDRP, the Provider shall suspend or terminate the Trademark PDDRP.

**REGISTRY RESTRICTIONS DISPUTE RESOLUTION PROCEDURE (RRDRP)<sup>1</sup>**  
**30 MAY 2011**

**1. Parties to the Dispute**

The parties to the dispute will be the harmed organization or individual and the gTLD registry operator. ICANN shall not be a party.

**2. Applicable Rules**

2.1 This procedure is intended to cover these dispute resolution proceedings generally. To the extent more than one RRDRP provider (“Provider”) is selected to implement the RRDRP, each Provider may have additional rules and procedures that must be followed when filing a Complaint. The following are the general procedure to be followed by all Providers.

2.2 In any new community-based gTLD registry agreement, the registry operator shall be required to agree to participate in the RRDRP and be bound by the resulting Determinations.

**3. Language**

3.1 The language of all submissions and proceedings under the procedure will be English.

3.2 Parties may submit supporting evidence in their original language, provided and subject to the authority of the RRDRP Expert Panel to determine otherwise, that such evidence is accompanied by an English translation of all relevant text.

**4. Communications and Time Limits**

4.1 All communications with the Provider must be filed electronically.

4.2 For the purpose of determining the date of commencement of a time limit, a notice or other communication will be deemed to have been received on the day that it is transmitted to the appropriate contact person designated by the parties.

4.3 For the purpose of determining compliance with a time limit, a notice or other communication will be deemed to have been sent, made or transmitted on the day that it is dispatched.

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<sup>1</sup> Initial complaints that a Registry has failed to comply with registration restrictions shall be processed through a Registry Restriction Problem Report System (RRPRS) using an online form similar to the Whois Data Problem Report System (WDPRS) at InterNIC.net. A nominal processing fee could serve to decrease frivolous complaints. The registry operator shall receive a copy of the complaint and will be required to take reasonable steps to investigate (and remedy if warranted) the reported non-compliance. The Complainant will have the option to escalate the complaint in accordance with this RRDRP, if the alleged non-compliance continues. Failure by the Registry to address the complaint to complainant’s satisfaction does not itself give the complainant standing to file an RRDRP complaint.

- 4.4 For the purpose of calculating a period of time under this procedure, such period will begin to run on the day following the date of receipt of a notice or other communication.
- 4.5 All references to day limits shall be considered as calendar days unless otherwise specified.

**5. Standing**

- 5.1 The mandatory administrative proceeding will commence when a third-party complainant (“Complainant”) has filed a Complaint with a Provider asserting that the Complainant is a harmed established institution as a result of the community-based gTLD registry operator not complying with the registration restrictions set out in the Registry Agreement.
- 5.2 Established institutions associated with defined communities are eligible to file a community objection. The “defined community” must be a community related to the gTLD string in the application that is the subject of the dispute. To qualify for standing for a community claim, the Complainant must prove both: it is an established institution, and has an ongoing relationship with a defined community that consists of a restricted population that the gTLD supports.
- 5.3 Complainants must have filed a claim through the Registry Restriction Problem Report System (RRPRS) to have standing to file an RRDRP.
- 5.4 The Panel will determine standing and the Expert Determination will include a statement of the Complainant’s standing.

**6. Standards**

- 6.1 For an claim to be successful, the claims must prove that:
  - 6.1.1 The community invoked by the objector is a defined community;
  - 6.1.2 There is a strong association between the community invoked and the gTLD label or string;
  - 6.1.3 The TLD operator violated the terms of the community-based restrictions in its agreement;
  - 6.1.3 There is a measureable harm to the Complainant and the community named by the objector.

**7. Complaint**

- 7.1 Filing:

The Complaint will be filed electronically. Once the Administrative Review has been completed and the Provider deems the Complaint to be in compliance, the Provider will

electronically serve the Complaint and serve a hard copy and fax notice on the registry operator consistent with the contact information listed in the Registry Agreement.

7.2 Content:

7.2.1 The name and contact information, including address, phone, and email address, of the Complainant, the registry operator and, to the best of Complainant's knowledge, the name and address of the current owner of the registration.

7.2.2 The name and contact information, including address, phone, and email address of any person authorized to act on behalf of Complainant.

7.2.3 A statement of the nature of the dispute, which must include:

7.2.3.1 The particular registration restrictions in the Registry Agreement with which the registry operator is failing to comply; and

7.2.3.2 A detailed explanation of how the registry operator's failure to comply with the identified registration restrictions has caused harm to the complainant.

7.2.4 A statement that the proceedings are not being brought for any improper purpose.

7.2.5 A statement that the Complainant has filed a claim through the RRPRS and that the RRPRS process has concluded.

7.2.6 A statement that Complainant has not filed a Trademark Post-Delegation Dispute Resolution Procedure (PDDRP) complaint relating to the same or similar facts or circumstances.

7.3 Complaints will be limited to 5,000 words and 20 pages, excluding attachments, unless the Provider determines that additional material is necessary.

7.4 Any supporting documents should be filed with the Complaint.

7.5 At the same time the Complaint is filed, the Complainant will pay a filing fee in the amount set in accordance with the applicable Provider rules. In the event that the filing fee is not paid within 10 days of the receipt of the Complaint by the Provider, the Complaint will be dismissed without prejudice to the Complainant to file another complaint.

**8. Administrative Review of the Complaint**

8.1 All Complaints will be reviewed within five (5) business days of submission by panelists designated by the applicable Provider to determine whether the Complainant has complied with the procedural rules.

- 8.2 If the Provider finds that the Complaint complies with procedural rules, the Complaint will be deemed filed, and the proceedings will continue. If the Provider finds that the Complaint does not comply with procedural rules, it will electronically notify the Complainant of such non-compliance and provide the Complainant five (5) business days to submit an amended Complaint. If the Provider does not receive an amended Complaint within the five (5) business days provided, it will dismiss the Complaint and close the proceedings without prejudice to the Complainant's submission of a new Complaint that complies with procedural rules. Filing fees will not be refunded if the Complaint is deemed not in compliance.
- 8.3 If deemed compliant, the Provider will electronically serve the Complaint on the registry operator and serve a paper notice on the registry operator that is the subject of the Complaint consistent with the contact information listed in the Registry Agreement.

## **9. Response to the Complaint**

- 9.1 The registry operator must file a response to each Complaint within thirty (30) days of service the Complaint.
- 9.2 The Response will comply with the rules for filing of a Complaint and will contain the names and contact information for the registry operator, as well as a point by point response to the statements made in the Complaint.
- 9.3 The Response must be electronically filed with the Provider and the Provider must serve it upon the Complainant in electronic form with a hard-copy notice that it has been served.
- 9.4 Service of the Response will be deemed effective, and the time will start to run for a Reply, upon electronic transmission of the Response.
- 9.5 If the registry operator believes the Complaint is without merit, it will affirmatively plead in its Response the specific grounds for the claim.
- 9.6 At the same time the Response is filed, the registry operator will pay a filing fee in the amount set in accordance with the applicable Provider rules. In the event that the filing fee is not paid within ten (10) days of the receipt of the Response by the Provider, the Response will be deemed improper and not considered in the proceedings, but the matter will proceed to Determination.

## **10 Reply**

- 10.1 The Complainant is permitted ten (10) days from Service of the Response to submit a Reply addressing the statements made in the Response showing why the Complaint is not "without merit." A Reply may not introduce new facts or evidence into the record, but shall only be used to address statements made in the Response. Any new facts or evidence introduced in a Response shall be disregarded by the Expert Panel.
- 10.2 Once the Complaint, Response and Reply (as necessary) are filed and served, a Panel will be appointed and provided with all submissions.

**11. Default**

- 11.1 If the registry operator fails to respond to the Complaint, it will be deemed to be in default.
- 11.2 Limited rights to set aside the finding of default will be established by the Provider, but in no event will it be permitted absent a showing of good cause to set aside the finding of Default.
- 11.3 The Provider shall provide Notice of Default via email to the Complainant and registry operator.
- 11.4 All Default cases shall proceed to Expert Determination on the merits.

**12. Expert Panel**

- 12.1 The Provider shall select and appoint a single-member Expert Panel within (21) days after receiving the Reply, or if no Reply is filed, within 21 days after the Reply was due to be filed .
- 12.2 The Provider will appoint a one-person Expert Panel unless any party requests a three-member Expert Panel.
- 12.3 In the case where either party requests a three-member Expert Panel, each party (or each side of the dispute if a matter has been consolidated) shall select an Expert and the two selected Experts shall select the third Expert Panel member. Such selection shall be made pursuant to the Provider's rules or procedures. RRDRP panelists within a Provider shall be rotated to the extent feasible.
- 12.4 Expert Panel members must be independent of the parties to the post-delegation challenge. Each Provider will follow its adopted procedures for requiring such independence, including procedures for challenging and replacing an Expert for lack of independence.

**13. Costs**

- 13.1 The Provider will estimate the costs for the proceedings that it administers under this procedure in accordance with the applicable Provider Rules. Such costs will cover the administrative fees, including the Filing and Response Fee, of the Provider, and the Expert Panel fees, and are intended to be reasonable.
- 13.2 The Complainant shall be required to pay the Filing fee as set forth above in the "Complaint" section, and shall be required to submit the full amount of the other Provider-estimated administrative fees, including the Response Fee, and the Expert Panel fees at the outset of the proceedings. Fifty percent of that full amount shall be in cash (or cash equivalent) to cover the Complainant's share of the proceedings and the other 50% shall be in either cash (or cash equivalent), or in bond, to cover the registry operator's share if the registry operator prevails.

- 13.3 If the Panel declares the Complainant to be the prevailing party, the registry operator is required to reimburse Complainant for all Panel and Provider fees incurred, including the Filing Fee. Failure to do so shall be deemed a violation of the RRDRP and a breach of the Registry Agreement, subject to remedies available under the Agreement up to and including termination.
- 13.4 If the Panel declares the registry operator to be the prevailing party, the Provider shall reimburse the registry operator for its Response Fee.

**14. Discovery/Evidence**

- 14.1 In order to achieve the goal of resolving disputes rapidly and at a reasonable cost, discovery will generally not be permitted. In exceptional cases, the Expert Panel may require a party to provide additional evidence.
- 14.2 If permitted, discovery will be limited to that for which each Party has a substantial need.
- 14.3 Without a specific request from the Parties, but only in extraordinary circumstances, the Expert Panel may request that the Provider appoint experts to be paid for by the Parties, request live or written witness testimony, or request limited exchange of documents.

**15. Hearings**

- 15.1 Disputes under this RRDRP will usually be resolved without a hearing.
- 15.2 The Expert Panel may decide on its own initiative, or at the request of a party, to hold a hearing. However, the presumption is that the Expert Panel will render Determinations based on written submissions and without a hearing.
- 15.3 If a request for a hearing is granted, videoconferences or teleconferences should be used if at all possible. If not possible, then the Expert Panel will select a place for hearing if the parties cannot agree.
- 15.4 Hearings should last no more than one day, except in the most exceptional circumstances.
- 15.5 If the Expert Panel grants one party's request for a hearing, notwithstanding the other party's opposition, the Expert Panel is encouraged to apportion the hearing costs to the requesting party as the Expert Panel deems appropriate.
- 15.6 All dispute resolution proceedings will be conducted in English.

**16. Burden of Proof**

The Complainant bears the burden of proving its claim; the burden should be by a preponderance of the evidence.

**17. Recommended Remedies**

- 17.1 Since registrants of domain names registered in violation of the agreement restriction are not a party to the action, a recommended remedy cannot take the form of deleting, transferring or suspending registrations that were made in violation of the agreement restrictions (except to the extent registrants have been shown to be officers, directors, agents, employees, or entities under common control with a registry operator).
- 17.2 Recommended remedies will not include monetary damages or sanctions to be paid to any party other than fees awarded pursuant to section 13.
- 17.3 The Expert Panel may recommend a variety of graduated enforcement tools against the registry operator if the Expert Panel determines that the registry operator allowed registrations outside the scope of its promised limitations, including:
- 17.3.1 Remedial measures, which may be in addition to requirements under the registry agreement, for the registry to employ to ensure against allowing future registrations that do not comply with community-based limitations; except that the remedial measures shall not:
- (a) Require the registry operator to monitor registrations not related to the names at issue in the RRDRP proceeding, or
  - (b) direct actions by the registry operator that are contrary to those required under the registry agreement
- 17.3.2 Suspension of accepting new domain name registrations in the gTLD until such time as the violation(s) identified in the Determination is(are) cured or a set period of time;
- OR,
- 17.3.3 In extraordinary circumstances where the registry operator acted with malice providing for the termination of a registry agreement.
- 17.3 In making its recommendation of the appropriate remedy, the Expert Panel will consider the ongoing harm to the Complainant, as well as the harm the remedies will create for other, unrelated, good faith domain name registrants operating within the gTLD.

**18. The Expert Determination**

- 18.1 The Provider and the Expert Panel will make reasonable efforts to ensure that the Expert Determination is rendered within 45 days of the appointment of the Expert Panel and absent good cause, in no event later than 60 days after the appointment of the Expert Panel.
- 18.2 The Expert Panel will render a written Determination. The Expert Determination will state whether or not the Complaint is factually founded and provide the reasons for its

Determination. The Expert Determination should be publicly available and searchable on the Provider's web site.

- 18.3 The Expert Determination may further include a recommendation of specific remedies. Costs and fees to the Provider, to the extent not already paid, will be paid within thirty (30) days of the Expert Determination.
- 18.4 The Expert Determination shall state which party is the prevailing party.
- 18.5 While the Expert Determination that a community-based restricted gTLD registry operator was not meeting its obligations to police the registration and use of domains within the applicable restrictions shall be considered, ICANN shall have the authority to impose the remedies ICANN deems appropriate, given the circumstances of each matter.

**19. Appeal of Expert Determination**

- 19.1 Either party shall have a right to seek a de novo appeal of the Expert Determination based on the existing record within the RDRP proceeding for a reasonable fee to cover the costs of the appeal.
- 19.2 An appeal must be filed with the Provider and served on all parties within 20 days after an Expert Determination is issued and a response to the appeal must be filed within 20 days after the appeal. Manner and calculation of service deadlines shall in consistent with those set forth in Section 4 above, "Communication and Time Limits."
- 19.3 A three-member Appeal Panel is to be selected by the Provider, but no member of the Appeal Panel shall also have been an Expert Panel member.
- 19.4 The fees for an appeal in the first instance shall be borne by the appellant.
- 19.5 A limited right to introduce new admissible evidence that is material to the Determination will be allowed upon payment of an additional fee, provided the evidence clearly pre-dates the filing of the Complaint.
- 19.6 The Appeal Panel may request at its sole discretion, further statements or evidence from any party regardless of whether the evidence pre-dates the filing of the Complaint if the Appeal Panel determines such evidence is relevant.
- 19.7 The prevailing party shall be entitled to an award of costs of appeal.
- 19.8 The Providers rules and procedures for appeals, other than those stated above, shall apply.

**20. Breach**

- 20.1 If the Expert determines that the registry operator is in breach, ICANN will then proceed to notify the registry operator that it is in breach. The registry operator will be given the opportunity to cure the breach as called for in the Registry Agreement.

- 20.2 If registry operator fails to cure the breach then both parties are entitled to utilize the options available to them under the registry agreement, and ICANN may consider the recommended remedies set forth in the Expert Determination when taking action.
- 20.3 Nothing herein shall be deemed to prohibit ICANN from imposing remedies at any time and of any nature it is otherwise entitled to impose for a registry operator's non-compliance with its Registry Agreement.

**21. Availability of Court or Other Administrative Proceedings**

- 21.1 The RRDRP is not intended as an exclusive procedure and does not preclude individuals from seeking remedies in courts of law, including, as applicable, review of an Expert Determination as to liability.
- 21.2 The parties are encouraged, but not required to participate in informal negotiations and/or mediation at any time throughout the dispute resolution process but the conduct of any such settlement negotiation is not, standing alone, a reason to suspend any deadline under the proceedings.



# Applicant Guidebook

(30 May 2011)

## Module 6

Potential applicants should be aware that this version of the Guidebook is for consideration and not yet approved. The proposed details of the New gTLD Program remain subject to further consultation and revision.

30 May 2011

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# Module 6

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## *Top-Level Domain Application - Terms and Conditions*

By submitting this application through ICANN's online interface for a generic Top Level Domain (gTLD) (this application), applicant (including all parent companies, subsidiaries, affiliates, agents, contractors, employees and any and all others acting on its behalf) agrees to the following terms and conditions (these terms and conditions) without modification. Applicant understands and agrees that these terms and conditions are binding on applicant and are a material part of this application.

1. Applicant warrants that the statements and representations contained in the application (including any documents submitted and oral statements made and confirmed in writing in connection with the application) are true and accurate and complete in all material respects, and that ICANN may rely on those statements and representations fully in evaluating this application. Applicant acknowledges that any material misstatement or misrepresentation (or omission of material information) may cause ICANN and the evaluators to reject the application without a refund of any fees paid by Applicant. Applicant agrees to notify ICANN in writing of any change in circumstances that would render any information provided in the application false or misleading.
2. Applicant warrants that it has the requisite organizational power and authority to make this application on behalf of applicant, and is able to make all agreements, representations, waivers, and understandings stated in these terms and conditions and to enter into the form of registry agreement as posted with these terms and conditions.
3. Applicant acknowledges and agrees that ICANN has the right to determine not to proceed with any and all applications for new gTLDs, and that there is no assurance that any additional gTLDs will be created. The decision to review, consider and approve an application to establish one or more

gTLDs and to delegate new gTLDs after such approval is entirely at ICANN's discretion. ICANN reserves the right to reject any application that ICANN is prohibited from considering under applicable law or policy, in which case any fees submitted in connection with such application will be returned to the applicant.

4. Applicant agrees to pay all fees that are associated with this application. These fees include the evaluation fee (which is to be paid in conjunction with the submission of this application), and any fees associated with the progress of the application to the extended evaluation stages of the review and consideration process with respect to the application, including any and all fees as may be required in conjunction with the dispute resolution process as set forth in the application. Applicant acknowledges that the initial fee due upon submission of the application is only to obtain consideration of an application. ICANN makes no assurances that an application will be approved or will result in the delegation of a gTLD proposed in an application. Applicant acknowledges that if it fails to pay fees within the designated time period at any stage of the application review and consideration process, applicant will forfeit any fees paid up to that point and the application will be cancelled. Except as expressly provided in this Application Guidebook, ICANN is not obligated to reimburse an applicant for or to return any fees paid to ICANN in connection with the application process.
5. Applicant shall indemnify, defend, and hold harmless ICANN (including its affiliates, subsidiaries, directors, officers, employees, consultants, evaluators, and agents, collectively the ICANN Affiliated Parties) from and against any and all third-party claims, damages, liabilities, costs, and expenses, including legal fees and expenses, arising out of or relating to: (a) ICANN's or an ICANN Affiliated Party's consideration of the application, and any approval or rejection of the application; and/or (b) ICANN's or an ICANN Affiliated Party's reliance on information provided by applicant in the application.

6. Applicant hereby releases ICANN and the ICANN Affiliated Parties from any and all claims by applicant that arise out of, are based upon, or are in any way related to, any action, or failure to act, by ICANN or any ICANN Affiliated Party in connection with ICANN's or an ICANN Affiliated Party's review of this application, investigation or verification, any characterization or description of applicant or the information in this application, or the decision by ICANN to recommend, or not to recommend, the approval of applicant's gTLD application. APPLICANT AGREES NOT TO CHALLENGE, IN COURT OR IN ANY OTHER JUDICIAL FORA, ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION, AND IRREVOCABLY WAIVES ANY RIGHT TO SUE OR PROCEED IN COURT OR ANY OTHER JUDICIAL FORA ON THE BASIS OF ANY OTHER LEGAL CLAIM AGAINST ICANN AND ICANN AFFILIATED PARTIES WITH RESPECT TO THE APPLICATION. APPLICANT ACKNOWLEDGES AND ACCEPTS THAT APPLICANT'S NONENTITLEMENT TO PURSUE ANY RIGHTS, REMEDIES, OR LEGAL CLAIMS AGAINST ICANN OR THE ICANN AFFILIATED PARTIES IN COURT OR ANY OTHER JUDICIAL FORA WITH RESPECT TO THE APPLICATION SHALL MEAN THAT APPLICANT WILL FOREGO ANY RECOVERY OF ANY APPLICATION FEES, MONIES INVESTED IN BUSINESS INFRASTRUCTURE OR OTHER STARTUP COSTS AND ANY AND ALL PROFITS THAT APPLICANT MAY EXPECT TO REALIZE FROM THE OPERATION OF A REGISTRY FOR THE TLD; PROVIDED, THAT APPLICANT MAY UTILIZE ANY ACCOUNTABILITY MECHANISM SET FORTH IN ICANN'S BYLAWS FOR PURPOSES OF CHALLENGING ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION. APPLICANT ACKNOWLEDGES THAT ANY ICANN AFFILIATED PARTY IS AN EXPRESS THIRD PARTY BENEFICIARY OF THIS SECTION 6 AND MAY ENFORCE EACH PROVISION OF THIS SECTION 6 AGAINST APPLICANT.
  
7. Applicant hereby authorizes ICANN to publish on ICANN's website, and to disclose or publicize in any other manner, any materials submitted to, or obtained or generated by, ICANN and the ICANN Affiliated Parties in connection with the application, including evaluations, analyses and any other materials prepared in connection with the

evaluation of the application; provided, however, that information will not be disclosed or published to the extent that this Applicant Guidebook expressly states that such information will be kept confidential, except as required by law or judicial process. Except for information afforded confidential treatment, applicant understands and acknowledges that ICANN does not and will not keep the remaining portion of the application or materials submitted with the application confidential.

8. Applicant certifies that it has obtained permission for the posting of any personally identifying information included in this application or materials submitted with this application. Applicant acknowledges that the information that ICANN posts may remain in the public domain in perpetuity, at ICANN's discretion.
9. Applicant gives ICANN permission to use applicant's name in ICANN's public announcements (including informational web pages) relating to Applicant's application and any action taken by ICANN related thereto.
10. Applicant understands and agrees that it will acquire rights in connection with a gTLD only in the event that it enters into a registry agreement with ICANN, and that applicant's rights in connection with such gTLD will be limited to those expressly stated in the registry agreement. In the event ICANN agrees to recommend the approval of the application for applicant's proposed gTLD, applicant agrees to enter into the registry agreement with ICANN in the form published in connection with the application materials. (Note: ICANN reserves the right to make reasonable updates and changes to this proposed draft agreement during the course of the application process, including as the possible result of new policies that might be adopted during the course of the application process). Applicant may not resell, assign, or transfer any of applicant's rights or obligations in connection with the application.
11. Applicant authorizes ICANN to:

- a. Contact any person, group, or entity to request, obtain, and discuss any documentation or other information that, in ICANN's sole judgment, may be pertinent to the application;
  - b. Consult with persons of ICANN's choosing regarding the information in the application or otherwise coming into ICANN's possession, provided, however, that ICANN will use reasonable efforts to ensure that such persons maintain the confidentiality of information in the application that this Applicant Guidebook expressly states will be kept confidential.
12. For the convenience of applicants around the world, the application materials published by ICANN in the English language have been translated into certain other languages frequently used around the world. Applicant recognizes that the English language version of the application materials (of which these terms and conditions is a part) is the version that binds the parties, that such translations are non-official interpretations and may not be relied upon as accurate in all respects, and that in the event of any conflict between the translated versions of the application materials and the English language version, the English language version controls.
13. Applicant understands that ICANN has a long-standing relationship with Jones Day, an international law firm, and that ICANN intends to continue to be represented by Jones Day throughout the application process and the resulting delegation of TLDs. ICANN does not know whether any particular applicant is or is not a client of Jones Day. To the extent that Applicant is a Jones Day client, by submitting this application, Applicant agrees to execute a waiver permitting Jones Day to represent ICANN adverse to Applicant in the matter. Applicant further agrees that by submitting its Application, Applicant is agreeing to execute waivers or take similar reasonable actions to permit other law and consulting firms retained by ICANN in connection with the review and

evaluation of its application to represent ICANN adverse to Applicant in the matter.

14. ICANN reserves the right to make reasonable updates and changes to this applicant guidebook and to the application process at any time by posting notice of such updates and changes to the ICANN website, including as the possible result of new policies that might be adopted or advice to ICANN from ICANN advisory committees during the course of the application process. Applicant acknowledges that ICANN may make such updates and changes and agrees that its application will be subject to any such updates and changes. In the event that Applicant has completed and submitted its application prior to such updates or changes and Applicant can demonstrate to ICANN that compliance with such updates or changes would present a material hardship to Applicant, then ICANN will work with Applicant in good faith to attempt to make reasonable accommodations in order to mitigate any negative consequences for Applicant to the extent possible consistent with ICANN's mission to ensure the stable and secure operation of the Internet's unique identifier systems.

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RESPONDENT'S EXHIBIT



## Governmental Advisory Committee

Singapore, 23 June 2011

### GAC Communiqué – Singapore

#### I. Introduction

The Governmental Advisory Committee (GAC) of the Internet Corporation for Assigned Names and Numbers (ICANN) met in Singapore, during June 18 - 23, 2011. Forty nine Governments participated in the meeting: 47 present and 2 by remote participation. The GAC expresses warm thanks to the Infocomm Development Authority of Singapore for hosting the meeting and ICANN for supporting the GAC meeting.

#### II. New gTLDs

The GAC notes the Board's 20 June decision to launch the new gTLD programme.

The GAC appreciates the potentially beneficial opportunities provided by new gTLDs. However, the GAC is concerned that several elements of its advice on important public policy issues, including issues set out in the GAC's letter to the Board on 18th June (annexed), were not followed by the Board prior to the approval of the gTLD programme. The GAC acknowledges, however, that other advice was followed, and that the Board has provided a draft rationale for its decision to reject GAC advice.

The GAC has the expectation that the implementation of the new gTLD programme will respect applicable law in order to avoid detrimental consequences to parties involved, in particular to applicants.

The GAC expresses its willingness to continue to work constructively with the whole ICANN community on the new gTLD programme. The GAC also notes the commitment of the Board to reply in writing to the European Commission and the US government on the recent letters they have sent to ICANN related to competition issues.

#### III. GAC-Board Joint Working Group

The GAC-Board Joint Working Group (JWG) on the Role of the GAC within ICANN reviewed amendments to its draft report that address the recommendations from the Accountability and Transparency Review Team pertaining to the GAC (ATRT Recommendations #9-14). The JWG agreed to finalize the report for public comment, after which the GAC expects to collaborate with the Board to implement the recommendations included in the JWG report.

The GAC also re-states its strong support for the timely implementation by the Board of all of the ATRT Recommendations. The GAC will monitor the development of the implementation closely.

#### **IV. Advancing Law Enforcement Objectives to Mitigate DNS Abuse**

The GAC, together with representatives of law enforcement agencies (LEAs) from several GAC members, engaged with the Generic Names Supporting Organization (GNSO) Registrar Stakeholder Group on the status of LEA efforts to advance a “code of conduct” or “agreed best practices”, and reinforced the critical importance of demonstrating concrete and effective support for LEA objectives to include a timetable of implementable actions. The GAC welcomes the registrars’ offer to identify any substantive implementation issues with any unresolved LEA recommendations, for further dialogue with the GAC.

The GAC recalls its endorsement of LEA recommendations for due diligence and amendments to the Registrar Accreditation Agreement in June 2010, and urges the Board to support actions necessary to implement those recommendations as a matter of urgency.

#### **V. Meeting with the At-Large Advisory Committee**

The GAC met with the At-Large Advisory Committee (ALAC) on 19 June to further advance cooperation, and particularly to discuss how the two Committees could support the work of the Joint Applicant Support (JAS) Working Group. The GAC is encouraged by the reference to the ongoing work of JAS-WG in the resolution of the ICANN Board in the launch of this new round of gTLD expansion.

The GAC advises ICANN to provide the necessary resources required to evolve the JAS work towards implementation, including provision for legal, logistical, and authoring timely support of a universally accessible “Needs-Assessed Applicant Guidebook”.

#### **VI. Meeting with Security and Stability Advisory Committee**

The GAC held an informative and valuable meeting with the Security and Stability Advisory Committee (SSAC) that focused on the SSAC’s recently released report on the effects of blocking of top-level domains on the security and stability of the DNS system.

The GAC was particularly interested in the possibility of determining and developing means to identify and measure the specific harm of blocking of top level domains and possible incremental increase in harm when multiple top level domains are blocked on a wide scale. The GAC expressed its interest for more research and analysis into these issues. It also suggested having the SSAC report published in languages other than English in order to raise awareness across the wider Internet community. The GAC expressed its interest in further dialogue with the SSAC.

#### **VII. GAC-Country Code Names Supporting Organization joint session**

The GAC exchanged views with the Country Code Names Supporting Organization (ccNSO) on the following issues: the value of identifying shared priorities; the ccNSO’s perspectives on the ICANN operating plan and budget; the Framework of Interpretation Working Group (Fol WG) dealing with delegation and redelegation; an update on the Names of Countries and Territories Study Group; an update from the ccNSO on ICANN security and stability; and the impact of new territory or geographic TLDs on ccTLDs. The GAC indicated its strong interest in participating in the Fol WG,

which will hold its first face to face meeting on June 23 and looks forward to receiving a more detailed project timeline from the ccNSO regarding specific issues for the GAC's attention.

#### **VIII. Meeting with the WHOIS Review Team**

The WHOIS Review Team provided the GAC with a summary of the review's progress. The GAC identified and discussed:

- concerns about privacy and proxy services;
- the potential benefits of WHOIS data validation; and
- the need for effective compliance activities, noting that legitimate users of WHOIS data are negatively affected by non-compliance.

The GAC strongly supports the WHOIS Review Team's efforts, and looks forward to continued constructive engagement as the review progresses.

#### **IX. Meeting with Security, Stability and Resiliency Review Team**

The GAC met with the Security Stability and Resiliency (SSR) Review Team. In acknowledging the Team's mandate and scope of work, the GAC noted that the SSR Review is an opportunity to describe shortfalls in current plans, compliance and preparedness to address potential and actual threats. The GAC supports the Review Team proposal to review areas within the scope of ICANN's technical mission, while aiming to strike a balance to ensure that ICANN's SSR related activities are taken seriously and also recommending whether the criteria would need to be modified as the Internet evolves.

The GAC looks forward to continued engagement with the SSR-RT.

#### **X. Meeting with the Number Resource Organization**

The GAC met with the Number Resource Organization (NRO), who provided useful insights into the position of the numbering space following the final allocation of the /8 IPv4 address blocks.

The GAC discussed with the NRO about the IPv4 exhaustion, legacy space, competition concerns, IPv6 allocation and actions to facilitate the transition to IPv6.

The GAC noted the need to develop national initiatives to promote the technological update of the systems to ensure the communications infrastructure, public services and applications of the governments are compatible with IPv6, and to ensure that content is accessible from both IPv4 and IPv6 networks.

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The GAC warmly thanks all those among the ICANN community who have contributed to the dialogue with the GAC in Singapore.

The GAC will meet during the period of the 42<sup>nd</sup> ICANN meeting in Dakar, Senegal.

Singapore Communiqué Annex



Governmental Advisory Committee

Singapore, 18 June 2011.

Mr. Peter Dengate Thrush

Chairman of the Board of Directors

ICANN

RE: GAC communication on new gTLDs and Applicant Guidebook

Dear Mr. Dengate Thrush,

The GAC recognises that the most recent version of the Draft Applicant guidebook includes several changes which address some of the GAC's outstanding concerns but notes that there remain several substantive issues which require resolution before the launch of the new gTLD application process. These include:

- competition concerns, in particular those resulting from changes to registry-registrar cross-ownership rules;
- the demonstration of use requirement for trademark holders wishing to avail themselves of the propose trademark protection mechanisms; and
- removal of references in the gTLD Guidebook that attempt to specify that future GAC early warnings and advice must contain particular information or take a specified form, as these references are inconsistent with the GAC operating principles and the ICANN Bylaws.

The GAC would advise the Board that these issues involve important public policy objectives and, until resolved, also risk gTLD applications being made that conflict with applicable law. The GAC is of the view that the potential for this conflict with applicable law would operate to the detriment of gTLD applicants. Accordingly, the gTLD Guidebook should be amended to reflect these outstanding concerns.

The GAC draws the Board's attention to previous advice :

- ▲ on appropriate and timely support that should be provided to developing countries in implementing the new gTLD process;

- ⤴ on appropriate protections that should be offered to the Olympic, Olympiad and Red Crescent/Red Cross names
  
- ⤴ contained in the 26 May letter conveying the GAC's comments on the April 15 version of the Applicant Guidebook.

The GAC awaits the ICANN Board's response to this advice, and an explanation of how the advice will be considered before any decision on new gTLD Applicant Guidebook.

The GAC advises the Board that where the gTLD Guidebook attempts to specify that future GAC advice must contain particular information or take a specified form, these references should be deleted as they are inconsistent with GAC operating principles and the Bylaws.

To this end, and notwithstanding the GAC's wish to avoid any further delay in the new gTLD process, the GAC would advise the Board to ensure that all remaining public policy concerns are properly addressed and adequately respected before the new gTLD application procedure is finalised.

The GAC regards the ICANN Board's willingness and ability to respond to the GAC's views and to provide a rationale for its decisions is an important demonstration of the effectiveness of the ICANN multistakeholder model.

Sincerely,

A handwritten signature in black ink, appearing to read 'Heather Dryden', with a stylized, cursive script.

Heather Dryden

Chair, Governmental Advisory Committee

Senior Advisor to the Government of Canada

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**RESPONDENT'S EXHIBIT**

\*\*\* Disclosure: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.\*\*\*

New gTLDs and Applicant Guidebook Meeting with Board/GAC  
Sunday, 19 June 2011  
ICANN Meeting - Singapore

>>HEATHER DRYDEN: Good afternoon, everyone. I think we can begin. First I'd like to thank the board for meeting with us this afternoon. And I'd also like to thank the community members that are here as well to observe. I know that there's been a great deal of interest from the community and contributions from the community as we have worked on these issues of particular interest to the Governmental Advisory Committee, and so we do appreciate that.

For this meeting this afternoon, I would like to note that the GAC did provide advice on May 26th before the current version of the guidebook. And we also provided a letter yesterday evening that is a statement from the GAC regarding the outstanding issues, in particular some key outstanding issues. However, that doesn't diminish the importance of other areas or issues of advice that the GAC has provided to the board.

So what we would like to propose and what we would be most interested in is hearing a response from the board, a reaction, to the advice we have provided, in particular May 26th, and in light of the statement that we provided yesterday. But we have provided, of course, a body of advice over the months, and our latest comments should be taken without omitting consideration of the whole of GAC advice that has been provided to you the board.

So the statement that we provided yesterday does identify or highlight five particular issues. So, as I say, we would like to propose to the board that we use this as the basis of our agenda and we would like to hear the board's response to the advice we've given.

So, please, Peter, if you would.

>>PETER DENGATE THRUSH: Thank you, Heather. And let me join you in thanking members of the community who have come and been participating in this process for so long, and let me also thank the GAC for its participation in this process right from the beginning, including the very earliest GAC advice but, of course, most recently since the Cartagena meeting. And just jotting down some of that includes obviously the Brussels meeting, the scorecard, meetings in San Francisco, the further call we had on the 30th, the further letter we got from you on the 26th and the letter yesterday. So there's been an enormous effort put into this by the Governmental Advisory Committee and its work to improve the quality of the new gTLD program. And the board is very grateful for that. It is the reason why ICANN has a Governmental Advisory Committee and this is us working together well, it seems to us. So thank you for all that effort.

I would take your suggestion, Heather, and take yesterday's letter as being a very convenient listing of items and work through. And I'm going to take you through some of these things and then refer you to some of the board topic leads to help explain where we are with some of them.

I think if I can begin with the competition concerns, in particular

those resulting from changes to the registry/registrar cross-ownership. And the first thing to say is we've received not from the GAC but from two other governmental agencies letters concerning competition issues arising from the implementation of the vertical integration rules. And so the first thing is to acknowledge that we have received those and to confirm that we have evaluated those, including internally and with outside counsel. And we take very seriously the advice that's contained in those.

And if I can very quickly summarize our response at the stage today. The first is they deal merely with two different issues. One is what we call the legacy TLD, dot com, dot net, dot org and the others that are under existing contracts. And we have a process for transiting from the legacy position where there was vertical separation to the proposed model of vertical integration. We believe that that process largely takes care of many of the concerns that the governmental agencies have raised.

We also are very concerned about substantive market power, and we will not allow vertical integration to occur where we have any risk -- we believe there is any risk of the abuse of that market power.

In relation to the new TLDs, the position, of course, is slightly different. And we will work with those competition authorities and others to ensure that the process does not allow new TLDs to either go -- to have vertical integration where, again, there is any risk. So we take that message very seriously.

In relation to the demonstration of use requirement for trademark holders, I think it is probably most appropriate to ask Rita Rodin Johnston who has been the topic lead on the I.P. issues in general to explain the current position of the board in relation to that.

So, Rita, can I ask you to just respond on the demonstration of use requirement for trademark holders wishing to avail themselves of the new trademark protection mechanisms we have created in the new gTLD program.

>>RITA RODIN JOHNSTON: Sure. Thank you, Peter.

We've had a number of conversations between the board and the GAC on this topic. So I wanted to go back to look at how we got here today before our meeting so I could try again to give you all a rationale for where we are.

And Bruce very handily gave me the wording from the STI report which said, "Inclusion of a trademark in the trademark clearinghouse from a country where there is no substantive review does not necessarily mean that a new gTLD registry must include those trademarks in a sunrise or I.P. claims process."

So when the GAC scorecard came to the board, one of the points on the scorecard was: Why are you treating trademark registrations from different countries differently? Because in the United States, for example, to receive a trademark there must be a substantive review. Whereas in countries in Europe, there is no substantive review. So the board look a look at the guidebook and thought the GAC is right. This STI report seems to differentiate, to say it differently, to treat one country's trademarks in a superior way to another country's trademarks.

And so we, as a board, thought that was a very salient point that the GAC had raised and that was not actually a good result. So then we tried to look at and analyze, well, where do we go from here? And we've heard a lot about gaming of various sunrise systems. And, remember, the sunrise is a way to give superior rights to trademark owners, that they don't actually have currently under the law. This

is saying that a trademark is going to -- by having a registered trademark, you're going to be able to get a TLD before anyone else. And so one of the ways we thought we could level the playing field and make sure legitimate trademark owners were unfairly challenged in the registration was to say everybody is on a level playing field here.

So, for example, in the United States where you prove use to get a trademark, if you want to put your trademark in the clearinghouse and -- so it is "and," you can put your trademark in the clearinghouse without demonstrating use. So both U.S., European, South American, Asian, all trademarks will be accepted into the clearinghouse, period.

However, if you want to use that trademark in the clearinghouse as a basis for a sunrise registration, it is a very, very premier right, whether you have had the United States trademark or a Benelux trademark or a South African trademark, you will need to demonstrate use in order to qualify for a sunrise registration. And we thought this was an important requirement that will be applied equally to any registration from any country around the world. We thought this was a level playing field and a way to make sure that only legitimate trademark owners that are using marks are qualifying for sunrise registrations.

So we think this is reasonable, we think this responds to the GAC, and we think that this takes into account community concerns. We've talked to you all about this a few times, and we get the same comment back about the use requirement. And we don't understand it because we think it is actually good for trademark owners. And, again, we think we listened to your original point which was leveling the playing field.

So does anyone have a question about that? Or is there some other concern that we haven't quite gotten?

>>HEATHER DRYDEN: Thank you, Rita. Would the GAC topic lead, the U.K., like to raise a point at this moment?

>>UNITED KINGDOM: Thanks very much, Chair. And thank you, Rita, and board colleagues and everybody else who is attending here.

We note what you say in terms of endeavoring to create a level playing field, but the GAC position has to remain that we're fundamentally opposed to such an approach, which is actually, in our view, discriminatory because it does create a situation where trademarks registered in certain jurisdictions are not on the level with those that do actually require evidence of use.

So we can't see the argument as a convincing one that this is actually creating a level playing field. It is creating additional burden for those trademarks. It's not proven to us and I just want to say we appreciate very much the memo that came from the board in response to the questions we raised. But that memo really did not achieve what we hoped you might want to do. And that is categorically demonstrate that it is serving to address a problem by creating this requirement which contradicts the legal framework for trademark registrations in the EEU, in Australia and in other jurisdictions.

So that's our reaction to what you've just provided. Thank you.

>>PETER DENGATE THRUSH: Can I just ask a follow-up question? We see the position opposite so we don't understand how we can both be seeing this so differently. So require everyone to produce use is equal treatment. To allow some people to rely on the differential trademark registration systems is unequal. How is it that requiring everyone to do the same thing prejudices any one of those parties? If you could help us with that, because this is pretty fundamental. We think asking everyone to do the same thing, produce their trademark

registration which we all know come from different registries with different standards -- so we've got -- You begin with parties with disparate rights. Some have got their trademark registered in registries in 30 or 40 minutes with no proof of use. And some of them have gotten them from registries that have substantive examination. Discriminating between registries is unfair and insulting. So we say, All right, you start with your registration and then you must prove use.

So we are trying to make everybody equal. How is making -- how is requiring them both to produce use discriminating against either of them?

>>HEATHER DRYDEN: U.K., would you like to respond or do other GAC members want to comment?

U.K.

>>UNITED KINGDOM: Thanks. Well, we seem to be talking at cross-purposes obviously. Trademarks that register in jurisdictions where proof of use is not required are done -- those registrations are done in good faith. And then for those trademarks then to be entered into the clearinghouse, they have to pay that fee. And then they find that actually to be eligible for sunrise services.

And this proposal really does narrow the scope of sunrise services. We've had sunrise services for quite some time. But this is a new requirement which narrows the scope of eligibility for sunrise services.

So you're expecting many, many trademarks to be -- have to sort of raise up to a higher level bar to be eligible for sunrise services which are a creation of ICANN in terms of ICANN is managing and coordinating the expansion of the domain name space, but you're creating a higher bar in that sense.

So you should be respecting what is happening at national level and then using that as the basis for the rights protection mechanisms. That's the fundamental view of governments, and it's also this proposal is not based on community consensus. You've got us against this proposal. You've got the trademark community against this proposal. You've got the business sector against this proposal. So we can't really see how you're expecting to convince us of the legitimacy of it for those reasons.

We seem to be at a complete contrary situation here. And the advice of the GAC is that this requirement should be removed, both for the sunrise and for the URS. For the URS, our view is it runs against the whole objective of the URS to have a rapid, effective mechanism available. If you're going to have to submit evidence of use and that is scrutinized and if there are problems or arguments about the evidence submitted of use in the URS, you're going right against the whole purpose of the URS. So we think this conceptual approach of trying to create an artificial level playing field for trademark owners is flawed, fundamentally flawed. Thank you.

>>PETER DENGATE THRUSH: Can I just ask a follow-up because I listened very carefully. There's some different points emerging from that than the one I asked. And we'll come back to those. The point I was trying to work out is how -- the allegation that there is unequal treatment of the different registry owners. I didn't hear an answer on that point. It is the same treatment whether you have a registration from one country or another to provide evidence of use.

[ Applause ]

So I just don't -- so if you could come back to the question, which

was: How is this unequal treatment when we are so clear in our minds that it is the same treatment if everybody has to do the same thing: Produce a registration and produce use, not produce registrations of unequal value.

>>UNITED KINGDOM: Thanks. Forgive me. I think that's the wrong question.

[ Laughter ]

The question should be: What is the eligibility of trademark owners to benefit from the rights protection mechanisms? And you're ruling out trademarks that have been legitimately registered for the purpose of intention of use. Those are automatically discarded. And then for those trademarks that have the additional burden of submitting proof of use, which your memo now escalates to one of affidavits. They've got to obtain sworn statements in the presence of independent lawyers. That's a tremendous impact on small businesses who have got that additional burden to carry in order to enjoy the benefits of sunrise services through the centralized database of the clearinghouse across hundreds of domains.

So as I say, I think the key question is that inconsistency with trademark law as it is set out throughout the European Union and in other countries. That's the problem that we're trying to address. That's the key question. Thanks.

>>HEATHER DRYDEN: Thank you, U.K.

I can see Bertrand.

>>BERTRAND DE LA CHAPELLE: I'm not a trademark lawyer at all. What I understand in the dialogue is that maybe we are bumping into a delicate question, which is the following: The trademark regime has a geographical dimension. The trademark regime uses not only classes but also geographic definition and national laws, which means that within a national boundary there is a specific regime of recognition of trademarks that in certain cases requires use and in others does not.

The challenge we have as the board and as a collectively to define rules, that the sunrise systems that are going to be put in place are going to be sunrise systems at the global level. And the whole question is the challenge. I agree listening to the arguments and we've been, as you guessed, debating the pro and cons very extensively, the challenge that we have is that we're all directed by a notion of fairness and equal treatment.

And the challenge is -- and this is why I think Rita tried to explain, the challenge is how do you define equal treatment among systems that recognize differences when you have no problem that it is at the national level. Because the national level says it is this option or that option.

At the global level, we need to find a rule that is horizontal somehow. And the option that the board is taking and is trying to explain is that, yes, in a certain way, it raises the bar for one category of actor but it treats everybody the same in one limited sector which is a very specific right.

For the rest of the trademark protection as Rita explained, contrary to what the initial suggestion in the IRT, all trademarks are treated the same in the clearinghouse for claims. For sunrise, it is a specific element because of the concern. It may be wrong, but there is a concern that some actors may exploit the ease of registration of certain spaces to benefit from sunrise in an undue manner.

And so, trying to get a level playing field in a global space, the board is setting the bar a little bit higher because it is a special right.

But I agree that taken from the national angle, it is not exactly the way national governments do it because they have the benefit of the national boundaries which we don't, if it helps explain a little.

>>HEATHER DRYDEN: Thank you, Bertrand. I have Germany, please, then Bruce.

>>GERMANY: Yes, thank you, Bertrand, for this explanation. I think if I come back to your core point, I think it is rather difficult for ICANN -- and I would not agree on such a position that ICANN is going to define what is a trademark. A global -- and set global standards for trademark and, indeed, this would lead to such a position if you say we have several standards and we require these standards. And does this mean you would discriminate certain trademarks that do not use these standards? And, therefore, I really hesitate to have this question answered in this way.

Another issue is -- and I think we should really separate the discussion on this issue, is the question on whether there is some kind of gaming possible. I think the gaming question should be, yes, considered but probably not in the way that we differentiate between the different trademarks. That's a completely other issue, and we are prepared, I think, to discuss if there is a need for instruments to prevent this kind of behavior you also mentioned. We agreed to discuss instruments, but please do not define standard what is a trademark and what we accept and whatnot.

>>HEATHER DRYDEN: Thank you, Germany. I have Bruce.

>>BRUCE TONKIN: Thank you, Heather. Firstly, just to clarify this, there is no attempt to define what is or what is not a trademark. All trademarks are eligible to be inserted in the trademark clearinghouse regardless of nationality. Our minimum requirement is that you have a trademark. So there is no --

>>PETER DENGATE THRUSH: No discrimination.

>>BRUCE TONKIN: -- no discrimination on trademark. We have a Web of trademark protection mechanisms. There are four mechanisms. Two of the mechanisms a company would use or an organization would use when they're considering the introduction of a new name is they can either choose to preemptively register a name before anyone else has the chance to get that name. That's what sunrise is. Or they can, basically, wait and protect their rights. If somebody tries to register the name and uses the name in violation of the trademark, then they are protected between two mechanisms. One is trademark claims.

So, during the startup process for a registry, if someone tries to register their trademark, the party trying to register that trademark will be informed of the trademark that's in the registry and they need to warrant or effectively state that they won't infringe the rights of that trademark. And the trademark owner is also informed of that registration. So trademark claims don't need to have any use provision at all. It is merely just having a trademark and having it in the clearinghouse.

If you want to preemptively register, you are saying you want a first right to register this name over everybody else that might want to use the word for legitimate purposes, so you are getting a right that's not available with trademark law, your getting a right that says you can have this word before anybody else can. And we're saying in order to get that extra right, which is not a trademark right, it is a right

we are granting as part of the new gTLD program, we are saying it should be actually somebody using the trademark justifying a right to register the name before anyone else can. But the trademark right still exists.

So if anybody registers that name and misuses it, firstly, they would have to go through the trademark claims process; and secondly, they are subject to UDRP. And UDRP, the requirement to participate in the UDRP, which is the fourth mechanism we have, is simply having a trademark.

The other mechanism we have is a rapid suspension. Rapid suspension, you're saying there is such detrimental usage happening to the use of your mark that you need to immediately stop it being used. We can't see how that would be -- a name not being used, you are saying a name is not being used. You have a trademark but you are not using it. Why would you need a rapid suspension? UDRP is still there. You can have the name transferred to you on the basis of your trademark rights. But a rapid suspension is generally implying that you have a trademark in use and the damages to you for having somebody register that name and misuse it in a clear-cut case of misuse is immediately damaging you, therefore, you need a rapid suspension. So just be clear, trademarks are being treated equally. All trademarks are the same.

Trademarks in the trademark clearinghouse is available for trademark claims during startup and is eligible for UDRP if anybody registers that name and subsequently misuses it.

We are requiring an additional requirement to give some new rights, they are not trademark rights. We are giving new rights, which is to say you get to register a word before anyone else does. So we're requiring something in addition to trademark rights. I hope that clarifies that.

>>HEATHER DRYDEN: Thank you, Bruce.

Netherlands, please.

>>NETHERLANDS: I think the basic problem is that at least, if I can summarize it like that, we, basically, have a repository of trademarks which gives us rights within the internal process. Sorry.

But you are adding extra rules, extra rules which are, let's say -- maybe going in contrary of the national legislation. That means that the level playing field is fantastic but it is an illusion because getting a trademark in every country is different by definition. You won't level this by having an extra obligation on it.

So, basically, it is not an official kind of extra obligation which creates level playing field which it is not after all.

>>HEATHER DRYDEN: Thank you, Netherlands. Are there any further comments from the board or the GAC?

U.K. please.

>>UNITED KINGDOM: Thank you. Thank you, Chair. I guess we are coming back to this difference of perception of how you can be treating all trademarks equally if actually you're requiring this additional rule or burden in terms of those trademarks which aren't eligible for sunrise services because they do not have the existing ability to demonstrate use, either because they have not been registered with that requirement, the registration regime has not required it, and/or secondly, there are going to be trademarks that need to be protected where they haven't actually gone to market and actually used it.

This is the intention to use point that I referred to in my first response.

That is where the element of discrimination arises, and we do not see the justification for imposing that on those trademarks.

The gaming issue is well respected, a well acknowledged problem, but some sunrise services have not required proof of use to be an element of eligibility for the sunrise. Dot tel is an example of that.

And as I say, imposing this requirement through the guidebook is creating a narrowing of scope of the sunrise services, which we just do not feel is justified. And we haven't had a clear exposition of the argument that it is justified through tackling the gaming issue. As I say, there have been registries which have not required proof of use in tackling that problem, and we were disappointed that the memo really did not go into any great analysis of this issue of gaming as to why this is the only solution available.

So I'm sorry, but the GAC consensus view is this is totally unacceptable.

Thank you.

>>HEATHER DRYDEN: Thank you, U.K.

I have Norway, I have Rita, and Erika.

>>NORWAY: Thank you, Chair.

I am not going to go into the substance of the discussion, but I just wanted to remind everyone about the sort of overall guiding and steering of ICANN. And I just wanted to quote from the ICANN Articles of Incorporation in paragraph 4, and that states the corporation will operate for the benefit of the Internet community as a whole carrying out its activities in conformity with relevant principles of international law and applicable international conventions and local law.

So let's just sort of underline the position of the GAC that ICANN shall operate according to those, in conformity with those -- in the Articles of Incorporation.

So I just wanted to remind about that.

Thank you.

>>HEATHER DRYDEN: Thank you, Norway.

I believe Erika is next. Rita would like to speak later in the speaking order.

>>ERIKA MANN: I'd just like to go back to the point which were raised by the U.K. representative. I think it's -- you are right, and, I mean, I know the E.U. background, the legal background very well. And I think your point is well taken and we have taken, of course, all of this into consideration. Nonetheless, the question remains how you ensure fairness and how do you avoid, you know, gaming issues.

Now, I hear from your -- from the points you raise and the comments the way you phrased them that you are open to this -- to the difficulties which can stem from nonfairness on an international level and from gaming-related issues.

I wonder how you would phrase this? Now, you rightly, of course,

expect us to do it. But since we are in the final round -- hopefully, the final round and concluding our discussion, I wonder if we cannot just, you know, take five minutes to explore and see how you would approach it, or other GAC representative would approach it.

>>HEATHER DRYDEN: Thank you, Erika.

U.K., did you want to respond before I continue through the speaking order?

>>UNITED KINGDOM: Thank you. Very, very quickly. It's not for us to propose solutions, I'm afraid. We give you advice that what you are proposing to do is -- I'm sorry if it's what you expected but it's not our role.

Our role is to advise you that a proposal is not acceptable or unworkable, and that's what we're doing. We're trying to help you by telling you you have got to cross that one off.

So I'm sorry if that sounds like an expected negative reply, but it reflects the role of the GAC.

We've considered the proposal to impose proof of use on sunrise services and in the URS, and we consider that as unjustifiable.

So that's my comment, but colleagues may want to chip in.

Thank you.

>>HEATHER DRYDEN: Thank you, U.K.

Rita.

>>RITA RODIN JOHNSTON: Thanks, Heather. I think we're ready to move on. I just want to make two quick comments.

One, I think, Mark, I finally understand a little bit better what you're describing, but there is no discrimination here. And I'm finding it difficult to understand how you're seeing discrimination in terms of trademark laws and different geographies, because that's just not true.

But what we are saying as part of sunrise is, in fact, that if you have an intent to use, to use the U.S. framework, if you are just saying "I intend to use a trademark," that will not be eligible for sunrise. So that is true. And whether that is a U.S. trademark, a European trademark, an Asian trademark, if you are not using a mark but you want to try to file it to game the system and prevent legitimate trademark owners from getting sunrise registrations, we as a board are saying not cool.

[ Laughter ]

>>HEATHER DRYDEN: Rod.

>>ROD BECKSTROM: A quick comment. I greatly appreciate the great care and concern you've expressed for this from the United Kingdom as well as the views from Germany and Norway.

I think what's interesting about this dialogue on this very subtle and complex issue is I actually think the GAC and the board and the organization community share the same goals which is to do the best to craft a solution to protect the interest of trademark -- what I am call legitimate trademark owners.

And I believe that there is a difference in the perceived best way to implement the mechanisms to do it, but I just want you to know that I

feel the goals are absolutely shared, and that I think these mechanisms are very subtle and that the GAC may have a different view on which mechanisms can do the fine-tuning to achieve that. And the board and the intellectual property community, in listening to other members of the community, have a slightly different view, but let's not lose sight of the fact that I think we have a very common position on the objective and the goal. And that I think we have come a long way in the GAC, overall, to create a framework as best we can given the complexities to serve the global public interest.

So I want to thank you very much for your dedicated advocacy from the United Kingdom and other countries and just acknowledge that I think this is a very -- a great deal of congruence here and very, very minor differences.

Thank you.

>>HEATHER DRYDEN: Thank you, Rod.

I see Denmark.

>>DENMARK: I just have a question. I mean, you're talking about legitimate trademarks. Would that mean trademarks that are registered -- for instance, in Denmark, where you don't have to use it immediately, there's a timeline, for example because of having a waiting patent or whatever, something, would you call them illegitimate?

>>HEATHER DRYDEN: Mike.

>>MIKE SILBER: I really don't think we want to go into the details, but, no, not at all. That's not the intention at all, and that's not what Rod means by "legitimate."

I think what we're talking about is situations where a person or entity registers multiple trademarks in a convenient registry purely for the sake of obtaining that registration to game a sunrise period or otherwise. We're not talking at all about a situation where somebody intends to operate and is using applicable national law appropriately.

So it really goes down to intention and purpose.

The question is intention and purpose because an incredibly difficult element to investigate in an online electronic world, especially when dealing with multiple registrations with multiple TLDs. That's why there's been one proposal put on the table. That's why the suggestion of the additional use rights. It's not at all suggesting that people in the European Union or, for that matter, in my home jurisdiction where use is not required are suddenly all illegitimate trademark holders. It's not the intention at all, and I think we may just need to explain it a little bit better because it seems that notwithstanding our previous memo, the reasoning behind it is not getting through well enough.

>>HEATHER DRYDEN: Thank you, Mike.

U.K.

>>UNITED KINGDOM: Thanks.

There's one other aspect to this that we haven't discussed in this particular meeting, although I think we've raised it before, and that is even if you do go ahead with this, it's not clear to us that it's a workable solution. You are going to get gaming anyway, and you're going to get very spurious claims to use of trademarks. We don't see how you're going to be able, effectively, to scrutinize the evidence

of use without deploying significant expertise in use -- in commerce. In order to carry out this requirement and allocate the resources for scrutiny to take place, that's going to be a significant effort if you're not going to deal with those who still aim to abuse the situation -- abuse the process.

So we've looked at the practicalities, we have consulted on the practicalities of this, and the views we have had within national administrations is actually it's not going to work anyway.

So I put that before you as well, as really one element of a catalogue of concerns that we have that this approach is fundamentally flawed.

Thank you.

>>HEATHER DRYDEN: Thank you, U.K.

I have Bertrand.

>>BERTRAND DE LA CHAPELLE: In order to allow maybe to move to the other topics, I would like to summarize what I understand at that stage.

There is a joint -- As Rod said, I think there is a joint objective of having a regime of protection that is both fair and prevents gaming. I think following what Hubert said earlier, we basically have two options here. The path that the board is adopting at the moment is making a privilege to establish the rules in a way that we believe is on an equal footing and that prevents gaming. And so the preference has been given to that orientation.

The alternative is if we were to accept the GAC strong position of not putting this requirement of use, I understand from what Hubert said, and I think I agree, that then we will be confronted with the question of how do we handle gaming, because then there is a certainty of gaming as the experience of the past TLDs that have been introduced exemplifies.

So to summarize the way I see it now is this is the alternative. And I don't think we can go much further in that discussion. We've covered those elements. So if we could maybe move on to something else, and the board will think about the result of this discussion.

>>HEATHER DRYDEN: Thank you, Bertrand.

Is there time for one final comment from Germany? You don't insist. Okay.

>>PETER DENGATE THRUSH: Let me move on, then, to another topic which is removal of references in the guidebook that attempt to specify that future GAC early warnings and advice must contain particular information or take a specified form. And I am delighted to say the board agrees completely with the GAC in relation to this topic.

There's absolutely no intention to direct to the GAC either its processes or the wording it should use in corresponding and giving advice to the board. I think what we explained is we took the letter of the GAC itself which says we will work together to develop some wording. We are very confident that the GAC's intentions here are, as we said, very much the same as ours, and we think that methods of communicating and corresponding, et cetera, will develop over time, and we look forward to working with you to make that happen.

So I think we can call that a 1A.

And we don't have to have comment if there isn't any. I think the fact we are probably in agreement means we can move on to the next

one, unless somebody wants to --

>>HEATHER DRYDEN: U.K.

>>UNITED KINGDOM: Thank you, Chair. Can I just clarify what the process here is? Because we've -- you in your opening remarks referred to the May 26th set of comments, and there are the other IP issues where we are still awaiting reaction from the board. There were four other issues on which we have made proposals and stated our position.

So I -- And we've also skated over the competition issues without any discussion.

So I just -- Can I just seek a clarification of exactly what the process here is?

Thanks.

>>PETER DENGATE THRUSH: From my perspective, I thought what we would do is work through the ones you highlighted as most significant in your most recent letter. You do mention at the end of your letter that the other issues are still alive in your earlier letter. What I thought we would do is work through these, which have occupied us today, and then we can go back and deal with, today, the issues in your other letter.

So, yes, we'll come to them.

>>HEATHER DRYDEN: U.K.

>>UNITED KINGDOM: Thanks very much, Peter. That's appreciated that you are cognizant of a range of other issues.

We started off on the competition issue, and we didn't have a discussion about that. So what is -- Do you consider that as now closed off for this meeting or what?

Thank you.

Because I didn't feel that there was an adequate interaction on that specific issue.

Thank you.

>>PETER DENGATE THRUSH: Well, I'd be quite happy, now or later, to have any questions about the competition issues if you have them.

>>HEATHER DRYDEN: Thank you, Peter. I believe there is interest in examining that further. Okay. Please, European Commission.

>>EUROPEAN COMMISSION: Thank you, Mrs. Chair. I think the chair of the ICANN board referred to a submission of the European Commission as well as another submission by the U.S. government, the Department of Justice. We have set out in that submission that there are important concerns and a need for clarifications and further substantiation of the reversal of policy to allow vertical integration.

I'm not clear, like my U.K. colleague, how the ICANN board is take this into account. I mean, I'm not going to go step by step through our submission. It's public. It's on your Web site. Everybody can read it. But I think an important request to ICANN was that this fundamental decision should be disassociated from the launch of the gTLD program. And I would like to hear from the ICANN board as to whether they agree to this or whether they will implement the particular provisions as they have envisaged before. So that's one point.

I wanted to -- I mean, because the discussion is going a bit up -- I mean, back and forth, but on the trademark issue, I wanted to say that the European Commission fully supports those member states and the GAC consensus advice that there is a serious problem here. We're talking about legislation. We, as government, have a primary responsibility to ensure that the legislation which is adopted in our different jurisdictions is complied with and enforced. And here we have a real situation of a conflict where a decision by ICANN will impinge on the rights of trademark holders under European trademark law and national trademark law and even be in conflict with. And that we cannot accept as governments. But there is also had issue of a double standard because if I would simplify it, it would look like the U.S. trademark regime is given preference over the European or Australian or any other trademark regime and that clearly is not acceptable.

I understood one member saying that the system has to be fair and it needs to prevent gaming. I think the system is not fair as far as the and European Commission is concerned and the GAC is concerned and it will also not prevent gaming.

So I wanted to go on the record on both these points, but the main question now is to hear from the ICANN board how it will take into account the concerns set out in our letter and the request to disassociate the decision on the competition registry/registrar issue from the launch of the new gTLD program.

Thank you.

>>PETER DENGATE THRUSH: I just had a couple of questions. I just want to pick up on your last point because I thought we had been really clear that trademarks aren't discriminated against. I just don't understand your last point that somehow any trademark system under the proposal that we have made is advantaged.

Can you just explain how it is you see any trademark system has advantages over any other trademark system when they all have to produce a certificate of use?

>>EUROPEAN COMMISSION: It's very simple. If you are a trademark holder under U.S. law, you benefit from the protection. If you are a trademark holder under European law where you don't have to prove use --

>>PETER DENGATE THRUSH: No, no.

>>EUROPEAN COMMISSION: That's where the discrimination is. That's where the double treatments the double standard.

>>PETER DENGATE THRUSH: But you are not describing our proposal. I'm not sure what proposal you are describing, but under the proposal that we've got, the person with a United States registration has to do exactly what someone from a Benelux country has to do. They both have to come forward with proof of use.

>>EUROPEAN COMMISSION: We have had this discussion and it seems to be a discussion between the deaf and the stupid, in a way.

>>PETER DENGATE THRUSH: Well, it's.

>>EUROPEAN COMMISSION: There's no point in going through this discussion again.

>>PETER DENGATE THRUSH: If they both have to do the same thing --

>>EUROPEAN COMMISSION: Why don't you take the European trademark regime and make that the model for the rest of the world.

>>PETER DENGATE THRUSH: No trademark system is being advantaged when all people produce their registration and have to produce proof of use. It doesn't matter where -- It's precisely to not do what you think we are doing that we are doing it.

If we were to say that some trademark systems were better than others, you would be right. What we are saying is we are treating all trademark registrations the same. You produce your trademark from wherever it comes from and you produce evidence of use.

The person from the United States has to produce a U.S. registration and proof of use. A person from Benelux has to produce a registration and proof of use. We cannot see how you can say that discriminates between trademark systems. Not only that, we have designed a system specifically to prevent discrimination. So help us, please, with this.

Let's not go away today with anyplace of this left --

>>EUROPEAN COMMISSION: If you want to be helped, frankly, I think you have been given all the arguments much more eloquently than I could express them, including by my British colleague, by my German colleague, and you seem not to be willing to take them into account. And I don't think there's any interest in prolonging the discussion on this point if you have made up your mind. Clearly, you don't want to be convinced so what is the point of us trying to convince you further? You do not want to be convinced.

>>PETER DENGATE THRUSH: All right. Well, let's come to the competition issue.

I'm going to ask for help there, because it's a competition law issue, from General Counsel here, but I think we probably just want to clarify. The next question, your suggestion was your letter requires us to stop the new gTLD program -- sorry. Just clarify what the requirement in relation to the competition issue was that you asked the question about.

>>EUROPEAN COMMISSION: I am not going to read out the submission of the European Commission. It's clear. I think it's well structured. It identifies the issues of concern, which are issues of substance, issues of procedure, issues that also of community support. They are all there. I am not going to take one or two points and highlight them. This is the analysis and this is the position of the European Commission on that point.

But at the end, in the conclusion, there is a clear request or an urging of the European Commission on ICANN, and that I can read out because it's not very long.

We consider it preferable to disassociate such a fundamental decision from the new gTLD launch process and maintain for the time being and subject to the gathering of further data the existing rules on vertical separation between registries and registrars for both new and existing gTLDs subject to limited exceptions for clearly pro competitive cases.

So the question I put to you earlier, and I think I am putting it to you even more clearly now, is how are you going to respond to this particular request? Are you disassociating it from the launch of the new gTLDs or are you sticking to your position or have you modified your position in light of the elements that have been put to your attention?

>>JOHN JEFFREY: So the discussion at the board level on this particular issue has been very much taking into consideration the

letter from the E.C. with the nonpaper which was attached as well as the U.S. government position. And the discussion has been looking at it from two different positions. One is relating to the new generic top-level domains in the program as well as how the vertical integration decision would apply to those existing generic top-level domains. And we believe that those are treated differently in what we see in the papers.

Particularly as it relates to the process that's been set forward for existing gTLDs, we think that there is a process that's been proposed which is taking into account positions of significant market power and how those would be dealt with if they were to apply through the process.

So we would be grateful to work with the E.C. or the U.S. in terms of how to appropriately approve that process, but we think that process that's been set forward does take into account how to deal with existing registries and the market position that they might have that might affect consumers or others.

As it relates to new gTLDs, we think there has been a good point raised about the possibility of market power affecting new gTLD applications, and the board is looking at how to build a process that would allow the board to consider that as part of the overall application process. So we're certainly interested and willing to work with the parties that have written the letters to help establish a more formal process that could amend the existing process that's been proposed.

>>HEATHER DRYDEN: Thank you for that, John.

I have United States. Please.

>>UNITED STATES OF AMERICA: Thank you, Heather, and thank you John.

I just wanted to flag at least one sentence in the Department of Justice anti-trust division letter because I am also hopeful that we will have a written response. Certainly not today, but we will get a response in writing. And there is a fairly direct sentence in here that says, "In the division's view, ICANN should retain its prohibition on vertical integration for existing gTLDs except in cases where ICANN, in consultation with public and private sector stakeholders and independent analysts, determines that the registry does not have or is unlikely to obtain market power."

So there are quite a few recommendations that follow that, and it would be useful to get your views as to how you might want to follow-up on those recommendations. So I take your point that you are quite willing to work with them. But I think there is also, going back to the decision that you took for new gTLDs, I believe questions are raised there that would require a more detailed response than what we are hearing at the present time, if I may say, because it doesn't sound very definitive that there is any intention to modify the existing position. And it would be very helpful for us to know how you intend to proceed and whether you intend to potentially reconsider that decision.

>>HEATHER DRYDEN: Thank you, United States. Did you want to respond, or shall I continue?

>>PETER DENGATE THRUSH: I think we can answer that.

>>HEATHER DRYDEN: John, please.

>>JOHN JEFFREY: So the position that was set forth relating to new gTLDs was -- there were some new concepts involving the possibility of significant market power by players that were presenting applications

for new generic top-level domains. Where that might occur, where there might be significant market power, we're certainly looking for a way to build a process in that could consider that.

We think that that is a very important step. It is a step that the board is willing to consider. And I think in light of that, we would certainly want to work with you to determine whether there was a way to do that. So I think the commitment from the board is very clear that this is -- or at least the position that's been put forward by the board that would be voted on by the board, that there be some process to current amend the guidebook so there would be significant market power for new gTLDs.

>>HEATHER DRYDEN: Thank you, John.

I believe the European Commission. Yes, please.

>>EUROPEAN COMMISSION: Thank you. I think there is a bit of a misunderstanding particularly about how the ICANN board or the legal counsel how competition law is enforced. We don't kind of enter into discussions with players and parties beforehand. I mean, competition law is in force ex post. We can't give blanket kind of assurances. So unless we highlight in our submission, there is a fundamental misunderstanding about how competition law works and also ICANN, assuming this kind of competence to decide kind of significant market power is also not in line with the practice and the law of competition. So we're a bit kind of -- I mean, we would encourage the legal counsel to continue to improve his understanding of competition law in the European Union.

We're asking also a number of further elements. I think it is linked to what you as delegates said. We think there is a lot more need for data analysis underpinning expert advice, further documents that we think is absolute necessary, first of all, to understand how the market works. There is not a lot of data that ICANN has been providing over the years, despite repeated requests, including from the GAC and from countries about the current situation of cross-ownership.

So there is a lot of work that needs to be done by the ICANN board, and we urge that work to be done quickly. And we also, of course, would suspect as is the case, when you write a letter, you expect a response in writing.

I will be interested to hear -- actually what we are interested is in the ICANN board's view. The legal counsel's view is interesting. But does the legal counsel's point of view echo the ICANN board's point of view?

>>HEATHER DRYDEN: Thank you, European Commission.

>>PETER DENGATE THRUSH: I can say the answer is yes.

>>HEATHER DRYDEN: John, did you want to comment further? Please.

>>JOHN JEFFREY: I sure would, thank you. I think it's important to realize that ICANN has committed significant resources already to the issue. And, in fact, the vertical integration issue was one of the best documented decisions by the ICANN board.

ICANN has pledged to study and has committed to continue to study the economic issues that are associated with the existing and new generic top-level domains. And over the last couple years ICANN has hired some of the world's leading economists and those economists agreed have unanimously agreed that registry/registrar separation issues should not block the program.

With all of that in mind, we continue to commit to take these issues seriously and to address the concerns that have been expressed in the EC's letter and in the U.S. Department of Justice letter.

>>HEATHER DRYDEN: Thank you, John.

Bertrand?

>>BERTRAND DE LA CHAPELLE: Thank you, Heather.

In all those issues, it's always interesting and important to start from the objective. That's the first origin. One of the main angles to address the issue of vertical integration or non-integration is the following. The separation between registries and registrars was a remediation tool. It was used and put in place to address a very specific problem, without naming the company. We all know who is at stake.

When we are thinking about the opening up of the new gTLD program, there is a huge concern not only within the board but also within the community that, basically, the program doesn't produce only very large dot com copy cats type of TLDs but also a broad diversity of TLDs, innovative, small and big, non-for-profit and for-profit.

And the thinking is because they will all start small, unless we consider that any TLD has, basically, a market power in its own TLD, in the market as a whole, new TLD starting has actually potential of having market power. So there were two options: One was to impose on every single new TLD applicant, even if they are small, even if they will have problems finding registrars to put them on their shelves, to impose the same restriction as the one that was imposed as a remediation tool for the largest registry today; or to start from the other end and to say for the new gTLDs, we start with the assumption that there could be an integration because in certain cases, especially for the small ones, it has a benefit. And we pay great attention to the notion of market power, significant market power and potential abuse of power, which is the substance of competition regulations.

And I think that's the fundamental reason why the board went in the direction of removing vertical separation as an obligation for the new gTLD applicants, because it is helpful also for the small. Something that is sometimes forgotten.

However, what is very important and where we maybe went too far is to say if there is a problem with competition, we will send it back to the competition authorities which is probably not the right way to do it. The key question is how can we develop a relationship with the different competition authorities to understand better how this market structure will evolve.

But, again, we're opening up and the rule was adopted as an explanation mostly to help the small actors. That's for the new gTLD program. The question of allowing existing operators of existing TLDs to be able to compete and participate in the new gTLD program on an equal footing is a second, separate issue. But I hope it explains a little bit the angle.

>>HEATHER DRYDEN: European Commission, please.

>>EUROPEAN COMMISSION: Thank you. I find it interesting that the ICANN board members think that they have more knowledge about the competition than the competition authorities. But that's a side remark.

I wanted to make two points because I don't want to go again through all the issues. Even the studies commissioned by ICANN to experts

acknowledge the risk of potential harm to competition ruling from vertical integration. And in our submission, you see even the relevant references in case you don't have them ready at hand.

It is also interesting to note that within the GNSO community, there is a lack of consensus. So even the registries and the registrars, at least many of them, don't think this is a good idea. I mean, we're not in the business of -- I mean, as competition authorities, A, it would be very impractical but it would not be legal to work with particular interested parties in the market on the next anti- base. That's not how competition law works.

I mean, in the submission of the European Commission is the point I made at the beginning, we advise the ICANN board not to go ahead with this. That's what we advise. It is still the advice of the European Commission after the clarifications given by the ICANN board this evening.

>>HEATHER DRYDEN: Thank you, European Commission.

Erika?

>>ERIKA MANN: I would just like to respond because I feel personally a little bit attacked by your comment. It is not that the board hasn't discussed it and the board is not understanding how competition works. We had a long discussion about it, and we have many people with experience in this area including myself.

But it is a different environment we are entering. It is not like that everything in this world is already shaped by the past.

And this is the case here. So we are trying -- like in many other areas as well, we're trying to find the best solution. No one can argue that the best solution which we think is available is not the optimum one. That's something which I can certainly accept.

But I just would like to confirm that this board is certainly capable and certainly looking into all of the issues you raised.

I don't think so -- probably I don't know where this mood in this room a little bit comes from. Maybe I would recommend the point is taken we move on so we get an understanding and we can regroup later and in our communities and consult with each other and then come back to see how we can respond maybe to each other in a more positive mood.

>>HEATHER DRYDEN: Thank you, Erika.

United Kingdom, please.

>>UNITED KINGDOM: Thank you, chair. I defer to the European Commission on the legal issues where they have competence in this area, of course, for the whole of the European Union.

But if I could offer just a bit of an observation, I don't know whether this was a contributory factor for the mood of this discussion, but we note obviously what Erika said about this being an endeavor to find a solution in this dynamic world of the domain name space.

The decision that the board took struck us as a very sudden volte-face on a long-standing adherence to vertical separation. And I've heard what the counsel has said about the need to develop processes and so on.

It seems that this has been a very rapid move by the board. And it is very unsettling for governments to do that on such a critical issue. We like to see this model move dynamically, move rapidly. That's why

the model is supportable because it keeps in track with the dynamics of the Internet. But this is a pretty major step to take. And I just get the feeling that it's not completely bottomed out yet. And there are processes and things as counsel has acknowledged that need to be worked out.

And the commission has said: Where is the data, the analysis, you know? We haven't got that. We really, I think, are saying to you, "Hold off. We respect your genuine efforts and endeavors but hold off from making this move at this point because you don't have the support of governments for it" and for the reasons we've tried to express. As I say, talking to ministers, they are very unsettled and nervous about this. Thank you.

>>HEATHER DRYDEN: Thank you, U.K.

Are there further comments? Can we move on to the next Agenda Item?

>>PETER DENGATE THRUSH: Let's do that. The next one is the support for needy applicants from developing countries. And the reference on the left of the most letter is on appropriate and timely support that should be provided. We, first of all, recognize the current piece of advice that says there should be a discount, a 76% discount.

And we are at this stage not saying yes or no to that because that may well be what happens as a result of what's going on in term of the development of community processes.

So our point here is that this advise needs to be integrated with the current working of the community into developing this process and may well be the eventual outcome. If it is, then we would be following GAC advice. If we got different advice up through the community process, then it may well be different.

We continue to share the same concern that the GAC has, that the new gTLD program needs to be as inclusive as possible, part of the justification and enthusiasm for the program is that it will create additional methods of access and development and forms of expression for indigenous communities, endangered scripts, communities without access and so forth. And that's something the board has always submitted and encouraged the formation of the working group to develop a policy to give expression to that. And we continue to do that.

You, members of the GAC, will know that the joint working group has delivered its second milestone report. It reports to two masters which may not be the best way of chartering a working group but that's the one we've got. We've had some recommendations and discussions from the ALAC who are one of the chartering parties, and we are waiting for input from the GNSO to whom the joint working group also reports, recognizing as we've been reminded while we have been here in Singapore that the working group doesn't report to the board, it reports to its masters and they develop the policy and happened it to us.

So we are in that process and we are helping that process and we are looking forward to an outcome from it.

We'll be proposing to pass a resolution soon, if we can this week, that takes the following sort of lines at acknowledging referencing the work that's being done, looking forward to receiving that report and because we can't effectively dictate to the community when to have its work done by indicating that it would be most useful to us if that report was received in time for action by the board at the meeting in Senegal.

A new proposal which I think the members of the GAC will be interested in particularly and that is a resolution to set aside a budget of up

to \$2 million in U.S. currency for seed funding in the hope that other parties will provide matching funds to be available according to the form, structure and process to be determined by the board in consultation with the stakeholders. So we are waiting for this work to go through. We've put some money aside -- or we will be putting some money aside, up to \$2 million, to help this process.

Again, we will be indicating that the goal will be to have this form and structure and process around this fund completed in time for the launch of the -- or for the application phase. And we'll be modifying the by in the GAC to refer slightly more accurately to this program. So that's where we are up to with support for needy applicants from developing countries.

>>HEATHER DRYDEN: Thank you for that, Peter. Would the GAC like to comment on that? Kenya?

>>KENYA: Thank you, Heather, and thank you, Peter, very much and the board. Great progress. As you noted in the last GAC response regarding the issue, we applaud the second milestone report from the JAS and it actually does maybe quite narrative recommendations.

A few concerns we discussed today with the ALAC group is regarding the process itself in terms of having two chartering organizations and the challenges we find in terms of how GAC then provides advice. And the second one you've touched on is the timing in terms of when we are launching the gTLDs to ensure that developing countries and needy applicants are not excluded from this process. It is not so much about setting up a pot of money. I think support goes beyond just having a pot of money to subsidize the application process. There is much more to that.

Specifically, some of the very specific issues have to do with outreach campaign that I think we believe hasn't really taken place. And how do we go about that then we don't have assurances that the final report -- how the final report is going to be taken on by the DAG in the launch of the new gTLDs?

And then the method -- implementation methods are still not clear. I think the report hasn't given us a clear indication, concrete ways of implementing some of the provisions made and the proposals made. And so those are the few questions.

And another one that was brought up today that I think we feel had fallen off the cracks was on IDN factor here. The issue of offering multiple script versions for their products in communities where they ask your IDN and how then that would serve the needs of countries that have, you know, non-Latin script users and diverse languages. Those are some of the concerns I would like to hear what the board thinks about.

>>HEATHER DRYDEN: Thank you for that, Kenya.

Further comment?

>>PETER DENGATE THRUSH: The answer is we share all of those concerns with you. And we're -- and they are valid, and they need to come out -- the answers to them need to come out of the process.

It's hard to see how the board can do much more than we are doing, which is to say please get this material. It would be most useful if it is done by, it will be most useful that -- you know. The times that we have tried to force the pace in policy development haven't always been successful. So simply giving the working group deadlines, et cetera, to complete their work, which people have suggested, isn't always the way.

Your other point about how does the GAC get involved in that process, I assume -- I understand that there are members of the GAC on the working group or participating in the work of the working group, so that's one mechanism. And I suppose the others are at the time when the report comes back to the GNSO and to the At Large is the time for GAC intervention and GAC contribution.

>>HEATHER DRYDEN: Thank you, Peter. Switzerland.

>>SWITZERLAND: Thank you. I just would like to raise the attention to the board of the fact that we think that for the future acceptance of the ICANN model in the global community, and especially in the political community, it is of extreme relevance how many, let's say, percentage of these new gTLDs will come from or there's be in the benefit for the developing world. And there will be a huge difference in the acceptance of the -- in the future acceptance of this model when you have, maybe, out of 500 new gTLDs maybe one or two, or none, or you have at least -- I don't know, say a number, 10% of applications for the benefit of people in developing countries.

And looking at the DAG as it is now, we are not really sure whether this concern is sufficiently addressed, and especially you can always say we will learn in the future rounds and so on and so forth, but I think the argument that there should be a significantly high number of applications already in the first round is a very strong argument, and I just would like to raise your attention to this fact, that this will have an effect on how ICANN is performing.

Thank you.

>>PETER DENGATE THRUSH: I will just quickly respond. I agree completely with the first point that part of the measure of success of this program will be just as you say, the number of applicants that come that fall within that category.

>>HEATHER DRYDEN: Thank you, Peter.

I have U.K.

>>UNITED KINGDOM: Thank you, Chair. I'd just like to come in behind the point raised by Alice, which was a feature of our discussion with the ALAC this morning, this question of bundling of multiple script applications.

This is a proposal which we very much support as one that will further enhance ICANN's commitment to internationalizing the Internet to promoting linguistic and script diversity in the Domain Name System. And I'm aware that representations have been made to the chair, to Peter, on this very issue. I'm aware that the GNSO has not adopted any policy on this, and that has constrained the ability of the JAS to advance a recommendation on this issue.

So I would like to know what -- how has the chair or the board handled the representations made to him on this issue? I'm referring in particular to a letter dated 11 May, which was addressed, actually, both to the chief executive and the chair.

I think that representation, I would have hoped, would have signaled to you both that this is a major issue. And as I say, it is one that the U.K. would like to see advanced early in support of the proposal that multiscript applications for the same string are an acceptable element in the guidebook. There are cost efficiencies, because you are dealing with the same string. It's just that it's in different scripts. And as Alice, I think, indicated, there are communities where you have, within the same community, people using different scripts. And if the guidebook only allows one application, well, how do you decide what kind of script? And there are political risks that

would flow from arbitrarily selecting one script.

So I just want to, as I say, inquire about how you have responded and dealt with that representation made to you.

Thank you.

>>PETER DENGATE THRUSH: Sorry, Mike. I'm just not quite clear which representation it was. Obviously we receive things every day. Just help me. Who was it from and what was it about?

>>UNITED KINGDOM: It was -- thank you. It was from -- Well, the principal author of the letter was Ron Andruff, but there are a whole list of signatories in support of that letter. It's a letter dated 11 May addressed to you and to Mr. Beckstrom.

>>ROD BECKSTROM: Peter, I can answer the question. Clearly on the surface it's an attractive idea to think you can bundle all these things together and process them as one bunch, but unfortunately you can't because the processes that have been designed for the entire program have to treat each string character set separately and script set separately.

So there are no simple economies of scale. And it would be a complete restructuring of the program or an evolution of the program, which could certainly be possible in the future. And I myself am reminded of the complexity of these issues when I attended the IDN variant working group this morning, and the variants issue, after all these years, many of the experts still feel we do not even have a definition of the term "variants."

And doing multiple scripts associated with one string also invokes issues of variants. That just touches on one dimension of complexity that we do not yet have the technology for, the definitions for, and, therefore, not even the foundation for creating such a proposed bundled processing.

So the community, I believe, has discussed and looked at these issues multiple times in the past and come to the same conclusion, which is that there is no quick and easy fix, either to the variants issue or to the multiple scripts issue.

So the response to that question in Mr. Andruff's letter will certainly be we are not prepared to do that. We don't have the science, the technology, or the process developed for the new gTLD program, nor was that defined, I believe, in the initial PDP from the GNSO.

Thank you.

>>HEATHER DRYDEN: Thank you, Rod.

Did you want to do a quick follow-up to that, U.K? And then I'll return to the speaking order.

Please.

>>UNITED KINGDOM: Thank you, Chair. If I may, very quickly.

While I think it's a very regrettable situation that ICANN has found itself in, okay, no quick-and-easy fix, but this is a crucial, critical issue to the credibility of ICANN, as I say to its contribution to promoting diversity and accessibility for -- accessibility to the Domain Name System, to the Internet for communities in many, many developing countries in particular.

So if the issue has been shut down, I'm frankly surprised, if I can

leave that on record.

Thank you.

>>ROD BECKSTROM: Heather, may I?

>>HEATHER DRYDEN: Please, Rod, yes.

>>ROD BECKSTROM: Thank you very much for your views from the United Kingdom. And I would just like to suggest a modification to some of the language, which is it's not the situation ICANN finds itself in. It's the situation all of us find ourselves in.

The IETF, which has the brilliant engineers that created the Internet itself and have evolved it for 40 years, have not yet solved the variant issues and problems which are just one dimension, as I mentioned, of the important issue you have raised.

I hope and certainly look forward to all of us working together in the future to solve these problems. But there are genuinely complex issues that I think all of us can look at, but they may take some time to develop.

Thank you.

>>HEATHER DRYDEN: Thank you, Rod.

I have Sri Lanka, Mike Silber, and Senegal.

>>SRI LANKA: Thank you, Chair.

I just want to echo the sentiments expressed by Kenya and my friend Thomas and Mark in connection with this issue earlier, so I will not repeat myself in relation to the points raised by them.

Just a point of clarification that I have in relation to the JAS working group and their findings, because the board has chartered them with the task of formulating concrete recommendations.

Will the board be amending the application guidebook in accordance with the recommendations made by JAS? And at what point is it going to be done? As an ongoing basis? In relation to the issue about GAC participation, I believe we have a challenge about building consensus and the way in which we communicate with another working group, sitting side by side, along with so many other activities taking shape in this environment.

Some of us may be individually submitting our comments directly to the JAS working group, representing our individual countries.

Thank you.

>>PETER DENGATE THRUSH: Just a very minor technicality to start with. The board doesn't charter the working group. The board has asked the SOs and ACs to deal with this, and they have chartered the working group. So that means there is actually that other layer that they will come back and report. And that leads to the second question, which is we are going to be amending the guidebook to include reference to the work of that. But we don't have, yet, recommendations from ALAC or GNSO to put in the guidebook at this stage. So we'll be putting in all the other kind of positive things that we have been trying to say and we are going to have this other resolution which basically says please give thus work and here is some money that's available. All that stuff I read out before.

>>HEATHER DRYDEN: Thank you, Peter. Mike, you are next.

>>MIKE SILBER: Thank you, Chair. I will try to be brief.

I am very impressed with the lobbying efforts of some of the private sector have managed to get to GAC members. I think there is a lot of confusion in referring to bundling and support for needy applicants. Support for needy applicants is one issue. Bundling is a totally unrelated issue which, as I understand it, has been mooted in various fora and knocked down in each of those, including having been mooted within the JAS working group and knocked down in the JAS working group itself.

So I think if you are talking about following the ICANN model, following the multistakeholder model, we have to accept that that model also allows for community consensus to be both including the community, not simply accepting the view of a small grouping, as well as it may be because they have their own objections to that.

In addition, I don't really see how you promote competition by giving a single entity total global dominance of what maybe a generic term in multiple scripts and multiple languages.

[ Applause ]

>>MIKE SILBER: And so it may mean that somebody with a relatively small language script is then forced to go with an applicant because they manage to get the ASCII English term that then have a global monopoly on, for example, music or travel. What will stop somebody from having a smaller script or a more esoteric script, then, from -- that would prevent somebody obtaining the word for music in their own language or in their own particular scripts.

I think there are massive dangers and that we shouldn't confuse supporting needy applicants with the possibility of bundling.

Now, if we are getting into technical detail of a needy applicant who may be applying for more than one name and they have a right to that or there's a valid community attachment, that's something that the JAS working group or other community inputs need to propose through to the relevant SOs and ACs and then come up to the board. But to simply raise it top-down when it hasn't appeared in any of the other scorecards I think is, in a way, diminishing some of the critical emphasis we need to place on that issue of needy applicants. And we're just getting distracted by other issues.

>>HEATHER DRYDEN: Thank you for that Mike. I have Senegal, next, please.

>>SENEGAL: Thank you, Chair. I really want to support what Kenya and U.K. say about how could ICANN make some equity on the new gTLD process.

I think we need to think more about it. And I really appreciate what the board said about helping -- trying to work with us, to help the JAS and the At Large group on a new report, how to take into account our concern as developing countries.

And my concern is about the process and the agenda.

If we have to wait to have the report of the JAS and at Large, and also my -- I wonder if we could have time from now to Dakar to have a consensus on the GAC about if we -- about the amendment of the report, the report of JAS.

And I also take this opportunity to inform the GAC and the board that the AU, the African Union and Senegalese government will organize a high-level meeting on a specific ICANN agenda for Africa in Dakar from 19 to 21 of October, just before ICANN meeting. And I think the

output of this meeting can really help ICANN to take into account the specificity of the African community. And we have a lot of concern about new TLD. We have a lot of concern about IDN, about dot Africa and so forth. And I think it will be a right time to have our input on these issue.

And I think there's opportunity also to welcome all of you in Dakar in October.

Thank you.

>>HEATHER DRYDEN: Thank you very much for that, Senegal.

France, you are next.

>>FRANCE: Thank you. Bonjour.

Just one quick comment. I just maybe missed something in the process. This group is very useful and productive, but what I don't understand from the board side, and I hope you can explain to me this. Why are you so involved in all of the topics, like trademarks, competition, and many, many things, and on that very political topics that you just say there is a group. So we just wait. It's okay to have a group, a community group. But you don't seem to take responsibility. Do you know what I mean? It's just that you just wait. And maybe it's time to say that, as board, we always will, and it is our duty to take responsibility, before we consider important issues, the work has been done, we consider it by principle that for the first round something must be done for them. So we are going to do something.

I think just to wait that. I don't want to speak for them, of course, but I think it is just wait you to say something that you have to demonstrate that you have the will. And \$2 million, it's positive. We have to admit that. But maybe it's not enough. And maybe it will be too late in a sense. I also hear that.

They also say that we will be vulnerable because we won't have the money to protect what is important for us with the geo TLD, language community TLD. And some people, they can just come, because they have the money to do it, to steal us something. And many years ago, this had a name, okay? Like colonial behavior.

I'm from a colonial country with a nonglorious past. I'm not proud of that. So maybe that's why I am thinking differently.

Maybe it's too passionate subject.

But what I'm -- Please, if some people just laugh on that, just don't laugh. It's serious. It's political. Because in the end, we all want -- I have this card here, it's one world, one Internet; okay? This is our constitutional principle here at ICANN. We all inside of this. And that's why I think it's so important for them to -- not to stay on that. Just to wait for that group.

One of our former prime ministers just once say that when you want to bury a problem when you are a government, you just create the commission. 100 years after, nothing has changed at global governance, unfortunately.

So this is basic politics. Political solution of will. And I really pledge the board to do a little more than we can have something more successful. And I stop here because I don't want to speak for other people, but I just say what I just said.

So politics has been done but please do a little bit more and engage a little more on this. Thank you.

>>HEATHER DRYDEN: Thank you for that, France. I have Mike Silber and Kenya.

>>MIKE SILBER: Very briefly. All of the issues we have touched on have been through some of the processes. And we have been through equivalent committees and working groups dealing with the vertical integration question, dealing with trademark issues. They have been constituted. They have fed their input into the board which has then evolved. This is no different. It is following as a formal accelerated pace because of the pressure to implement the program, but it is following exactly the same process. There is no difference simply because this is political and rather a technical-legal or a technical-technology issue. And on that basis, I would suggest that additional participation to move this more quickly doesn't require the board to impose from the top down but to let the multistakeholder model work by actually building consensus from the bottom up.

>>HEATHER DRYDEN: Thank you, Mike.

Kenya?

>>KENYA: Thank you. I'd like to agree with my French colleague, that it's extremely important to make sure -- and, of course, express the same concern, a lot of enthusiasm when it comes to intellectual property issues and others. But alas when it comes to developing country issues and supporting developing countries, in fact, to begin with, out of curiosity, I would like to know how you came up with the \$2 million -- you know, how that figure was developed and how you came out of curiosity because thinking back to a process, for example, redelegation of the dot KE cost us nearly the same amount. When they talk to the ICANN community they say it doesn't cost anything. We need to be serious about these issues.

One of the issues I would like to go back and insist how are we going to ensure that we are creating a conducive environment to make sure that developing countries and needy applicants are not left behind in this new gTLD process. I think that is the important issue, and it needs to be reflected not only in the DAG but also as we are launching this new gTLD. We need to be sure that that is taken care, to ensure that we have the One World, one Internet philosophy that we are talking about here. Thank you.

>>HEATHER DRYDEN: Thank you, Kenya. I have Sébastien, Portugal and Rita.

>>SÉBASTIEN BACHOLLET: Thank you very much. I think we need to hear each other because I think what Peter said in the beginning, if I take the point of view of one of the exparticipants of the JAS group, I think it is a very important step forward and improvement and it will help the JAS group to deliver a report hopefully.

At the same time, the question is: How a different group could still participate to the JAS group? It seems that the GAC have some difficulty to send participants.

Then I would like to tell you two things. The first is the second milestone, it open for public comment and it is open for everybody. A few days ago it was published in the agreement of both the GNSO and the ALAC. And it is one way to participate and to be active in the definition of the process to help a needy applicant.

And, of course, you are the GAC. You will be available when we receive as board final report of the JAS group through the GNSO and the ALAC to make any additional comment.

And there are plenty of opportunities to participate. I am not sure the best way to help this process to go is to spend time with 100

people around the table when unfortunately there are 12 people -- or 20 people who are each week two hours twice a week trying to figure out what to do for needy applicant.

The work must be done there. And if you don't think the board do enough, I can tell you that there are some board members who follow very, very carefully what is happening there. And we hope that plenty of participants in this meeting will be participating in the next JAS call because they need. And it is a need for the needy applicant at the end of the day. Thank you very much.

>>HEATHER DRYDEN: Thank you, Sébastien.

Portugal?

>>PORTUGAL: Thank you. Well, I was thinking of whether it would make sense to intervene at this stage or not. But reading all these Twitters, I thought I should say something.

I think that ICANN people, they are forgetting that there is something that is called world. And there is something that is called IGF. There is something that is called European Union and OECD and where the majority of the delegates here are almost every single day supporting and defending the multistakeholder model.

Every single day we are doing something about business sector, about the civil society, about the importance of all these stakeholders in the management of Internet. If ICANN cannot help us in doing this, I'm afraid ICANN will have much more problems in the future. For instance, IGF can be the last one in Nairobi next September. So it is better if you are equated with what was going on, what the problems are and help these delegates to help you. Thank you.

>>PETER DENGATE THRUSH: Can I just ask a follow-up? We do appreciate and we are aware, obviously, that all of those people who are here, and particularly those who are at the GAC, are supporters of the model. And we've said previously, we are the ones trying to make this work and obviously a strong GAC means a strong ICANN. So, firstly, thank you for the daily battle that you refer that you're having.

The question from us is: How can we help you in that battle and defend the multistakeholder model? What particularly are you asking us to do to help you with that battle?

>>HEATHER DRYDEN: Thank you, Peter. I have Rita next.

>>RITA RODIN JOHNSTON: Thank you, Peter. Just to follow on Portugal's comment and to respond to the gentleman from France and someone else who had a similar comment, to quote Erika, I think those comments touched me.

I think we are happily speaking more civilly, but still comments like that I think are disturbing to me because I hope no one on the GAC truly believes every member of this board does not care about needy applicants, does not care about supporting them, does not care about the developing world.

We also care about the multistakeholder model. And if you ask us why we are arguing more about trademarks, it is because we've had a process for that. We had an IRT. We had a STI. We had multiple comment periods. So the board was given a policy that we saw as a compromise that came from the community to us and we are trying to reconcile some comments that you all have had.

With respect to the needy applicants, we have been awaiting some of the work product from the JAS working group. And we heard from the GNSO yesterday there have been some bumps in the road in terms of

procedures there and how these cross-constituency working groups work.

I think everybody wants to have the benefit of getting this information and this board especially does.

I think this fund was set up in a way to continue to incentivize this multistakeholder community, bottom-up process to give us some standards that you think would be used to apply this money. Please do know that the board does deeply care about this.

>>HEATHER DRYDEN: Thank you for that, Rita. I have Switzerland and then Katim.

>> SWITZERLAND: Thank you. I believe everybody believes the board cares about this. Maybe some wonder how much in compare to other issues.

I think maybe we could ask you a simple question, which gives a little bit of a benchmark in this respect. Maybe the board has done some thinking about how many percentage of new gTLDs from developing countries or for developing countries they expect. So a simple question: How many gTLDs should there be in the first round coming from developing countries? And how are you ensuring in the provisions in the DAG that this is going to happen? Maybe that's a simple question for the board to answer. Thank you.

>>PETER DENGATE THRUSH: The answer is that we haven't got any rules or thinking about that at all. And you might -- I'm not sure how productive it would be. You could poll each individual board members on their predictions. We don't know what's going to come. We don't know how many brand owners will apply for their brands. We don't know how many will apply for generics. We don't know how many will apply in IDN scripts and so forth. I'm not sure you will get a really helpful answer from the board.

>>HEATHER DRYDEN: Thank you, Switzerland.

Katim.

>>KATIM TOURAY: Thanks, GAC chair. And thanks, GAC members. I am so happy -- (laughter). If I were probably another color, I would be able to say I have just really been tickled pink by this meeting. Really.

[ Laughter ]

I'm just thinking to myself that I only wish we had this meeting before this and I wouldn't say why. But I would just so wish we had this meeting before today because I think it would have given us so much more food for thought and, also, so much ammunition to fight some of the battles we have to fight.

I thank you very much for your feedback. As has been said, I don't want to belabor the point. We are not perfect. We are just a bunch of individuals, very diverse people from all kinds of backgrounds. We certainly have or difficulties in some of the objectives and some of the responsibilities we have to discharge.

I think in my opinion or my view, the message has been received loud and clear by the board. And knowing what I know about how we work, I'm sure we are going to take the advice and the feedback we got and in good faith we are going to take it to heart and really work as the Americans say our butts off to make sure we can deliver something we all can be proud of. Again, thank you very much.

>>HEATHER DRYDEN: Thank you, Katim.

So I think you may be the final speaker.

Ah, European Commission, please.

>>EUROPEAN COMMISSION: I just want to go on the record that we fully support I think what many delegations have said. Just to refer to what the Portuguese delegate has said, the Swiss delegate, the French delegate, but all other delegates that this is an absolutely critical issue for the sustainability of the multistakeholder model and the act of the inclusion of the model.

We are looking, obviously there needs to be a lot of work to be done to prepare all of this. But I think we are all looking for tangible and concrete steps to be taken and then results. I mean, indeed if we get into a situation where there are very few or none gTLDs from developing countries, that that would be really embarrassing, that we will have to avoid as a collective effort. Thank you.

>>HEATHER DRYDEN: Thank you, European Commission.

And I think Egypt will have the last comment. Please.

>>EGYPT: Thank you, Heather.

Just very quickly, I do appreciate the work and the effort by the board to try as possible to be fair to everyone. But sometimes asking for the same thing from everyone is not one to one with fairness.

I mean, if I ask everyone in the room to freely express himself but in English, then I'm not being fair to everyone. So, again -- and I believe this applies to many of the topics that were discussed today, that sometimes asking for exactly the same request from everyone equally might not be as fair as it seems. Thank you.

>>HEATHER DRYDEN: Thank you very much for that comment, Egypt. And we are Russia next.

Please.

>>RUSSIA: Thank you, Chair. I think we haven't paid enough attention to the very important question, which is does the innovation affect the security and stability of the DNS infrastructure? And I believe the answer is yes, and it was not deliberated enough. Everything, all the questions about trademarks, about unregulated competition between registry and registrar, they encourage not only the market -- not only competition but also blocking of domains on the top level. And it is the point of decision, I believe.

>>PETER DENGATE THRUSH: Wonder if I can ask the vice chairman of the board, Dr. Crocker, who was the founding chairman of the ICANN Security and Stability Advisory Committee and who is obviously a world expert on security and stability of the Internet to respond.

Steve, can you answer the question about really whether the innovation we are proposing poses a substantial risk to the stability of the Internet?

>>STEVE CROCKER: Thank you, Peter. As you said, this has gotten a lot of attention. I'm not sure that I understood the exact point of the question, what aspect that you were focusing on with respect to the potential risks to security and stability. So perhaps you could say a bit more.

We certainly have looked at -- and the "we" here is a very inclusive "we." It is not just the Security and Stability Advisory Committee that I chaired for several years but also the full range in the community have looked at an awful lot of aspects to security and

stability with respect to scaling, with respect to IDNs, with respect to DNSSEC, with respect to all the different aspects.

So let me, if you would, say a bit more about -- if we get too specific here, this may not be the right forum. But I would like to get at least specific enough to know the general thrust of what your concern is.

>>RUSSIA: Generally my concern is if the market -- especially in developing countries will face the issues which is unregulated by our national law, it will erase the opposition using cyber tools of discussion. I mean, just commercial cyber wars. And we just underestimate how active will be the commercial players on the market, which you will see the unfair competition, which is not regulated by the law.

>>STEVE CROCKER: So there is a mixture of things that I think you're referring to. There is quite a lot of security issues in the Internet that are much broader than just domains per se, cyber attacks and fraud and identity theft and so forth.

>>RUSSIA: And cyber attacks.

>>STEVE CROCKER: And cyber attacks and so forth. That's a very, very big and very important area of concern of which ICANN has a relatively little leverage to do anything. But we get looked at to see what we can do about it because there aren't a lot of other mechanisms around.

An important question, is expansion of the domain name system going to exacerbate those problems? Is it going to make it worse? And is it appropriate to put some controls in place with respect to that?

A different element of what you might be asking about is whether there will be a tax on domain names per se as part of commercial warfare?hard to imagine that would be qualitatively different than anything we see already. There is some of that that takes place, but it has more to do with the business models behind those domain names.

>>RUSSIA: I believe the model will be changed with the new gTLD model. Trademarks are considered property, and we have opened the market for the -- turn trademark into the domain, top-level name. And at the same time, an experienced registry will appear on the market, and so the cyber attacks, for example, we'll see on the top level of domains. I believe it's a big threat to the stability of Internet, and we -- the people will turn to the government if they face some significant disruption in their Internet service.

So that's by -- we need the clear answer.

>>STEVE CROCKER: Let me ask if we can continue this -- I'm very interested in what it is that -- the picture that you have in mind, and perhaps we can dig into this a little bit off-line.

>>HEATHER DRYDEN: Thank you for that.

I don't see any further requests to speak on this topic, so if we can move to the next item on the agenda. Peter.

>>PETER DENGATE THRUSH: Thank you, Heather, yes. This is a really interesting and very typical problem. This is the question about appropriate. And I think that's the important word, the appropriate protection that should be offered to the Olympic and red crescent trademarks in relation to the (indiscernible) domain names. And the board has considered this very extensively particularly through the trademark group that has been formed to deal with this.

And our current thinking on this falls into two categories, and the first is the concept of blocking other people from using those at the second level. We think there are at least three problems with using -- with blocking at the second level. The first is the concept of self-blocking. We're not sure that the applicants themselves appreciate that they would then themselves not be able to use, for example, Olympic.games or Olympic.sport or redcross.appeal or some of the other things they may want to use. But the other problem that was raised in our conversation with you on the 30th was that it might be helpful, because the plethora of spamming and phishing attempts that follow any kind of natural disaster, for example, in relation to Red Cross, or anything around the Olympiad, and the answer is that this won't help that, and the suggestion that it will might just lead to greater confusion. So while we might be able to block redcross.appeal, we won't be able to block redcrosssunami.appeal or Red Cross anything else.

So the amount of protection that's available through this mechanism is insignificant by comparison to the actual problem. But much more importantly than those two matters is the fact that this is an extraordinarily broad protection not actually justified by the current legislation at the second level. And would in effect operate to deprive many other legitimate trademark owners of their current trademark rights, which I'm sure is not intended.

So, for example, Olympic taxis would not be allowed to register Olympic.taxi. Olympic fisheries wouldn't be allowed to register Olympic.fish or dot food and so on, and existing trademarks of Red Cross and we have seen a couple of redcross.salt.

So current protection for these words doesn't create the kind of monopoly that's being suggested here. What's usually created in relation to these kinds of brands is protection against user confusion in relation to specific events or specific areas.

So there's no justification for extending and creating this kind of sort of total monopoly at the second level.

Moving to the first level -- and again, this is an extraordinary exercise. We accept completely that these organizations, enormously important, have the kind of authority and status in the world that justifies special attention. And clearly they have an enormous amount of legislative protection in each of their countries. So we accept that there is, from the GAC side and from our side, a major public-policy issue in relation to these names.

I suppose one of the things we're not comfortable with is the suggestion that the reserved names list that's available for a completely different reason be used in this way. The reserved names list has been set up for largely technical reasons by RFCs, et cetera, and is not for another method of protecting famous brands or famous names in this sense.

We think that there has been some consideration around related issues. And if there is going to be a kind of policy development, that that should be done by the GNSO in this area.

We don't feel that this is an appropriate area for the board to be making policy at the 11th hour on the protection of these extraordinarily valuable cultural and other institutions.

Our current suggestion, therefore, is that we place a moratorium on registration at the top level of Olympic and Olympiad and the Red Cross and red crescent and the other names that are supported, while the GNSO develops policy in relation to how these sort of names ought to be protected. So that's our current position. Not suggesting --

Not really a possibility at the second level, but something needs to be done at the top level. The proper people to do this are the GNSO. While they're doing that, we will place a block on these, not via use of the reserved names list because that's something else, to prevent any abuse while we come up with the appropriate policy to take care of this important public-policy issue.

>>HEATHER DRYDEN: Thank you, Peter.

Would the GAC like to make a comment on the information provided by the board?

U.K.?

>>UNITED KINGDOM: Thank you very much, Chair, and thank you for Peter for giving such a comprehensive account of your position, and we're very appreciative of the consideration you have given to these two particular quests from the IOC and Red Cross and red crescent movements. As you said, these are extraordinary requests, and that's why they merited the attention of governments, and ultimately, we were able to provide advice to you on adding them to the reserved names list.

And I think we note what you say with regard to the moratorium, and then we will consult further on this. But appreciate very much your efforts in this regard.

Thank you.

>>HEATHER DRYDEN: Thank you, United Kingdom.

United States.

>>UNITED STATES OF AMERICA: Thank you, Heather, and thank you, Mark. I would like to join Mark in sort of expressing our appreciation for the overview of the efforts that you have undertaken to kind of look through what these requests entail.

I do have a couple of questions, though, and it would be useful -- I know it's getting late and people are getting restive so I can put it out there to be followed up at later point in time. Just a question as to the hesitation vis-a-vis the evolution of the reserved names list. Somehow that seems to be considered sacrosanct, and I am just curious, if we can evolve the entire DNS, and we can introduce DNSSEC and we're going to transition to IPv6, and we are going to open up the new gTLD world to gazillions of new top-level names, would it not make sense that you would also examine the underlying purpose of the existing reserved names list?

So we for one think that would not be an unreasonable approach and not to somehow consider it so unique that you can't reconsider it.

So I would like to put that marker down. We strongly suggest that that list could be evolved as well.

I would also like to just, I guess, express a bit of hesitation. And in fairness, I am not expressing the views of my colleagues around the GAC table on this one. So it's a hesitation coming just from (indiscernible). The idea of a GNSO policy process on this, frankly, if I were the IOC and the Red Cross, I would probably fall over and have a heart attack. It strikes me that this could take an enormous amount of time to address their concerns.

And I am mind of the fact that I think at one point in time the GNSO itself had a small working group that looked into this issue while they were developing the new gTLD recommendations. So I look to the GNSO to correct me. And I don't know what the results of that work

was.

But I just would express some hesitation there that this strikes me as sort of kicking the can.

I do appreciate that these are sensitive issues, and they are significant issues. I guess as you can -- If I can just restate what the GAC consensus advice noted, we think these two are fairly unique entities that have a measure of protection that we seriously doubt anybody else could meet, both in national law and international legal instruments. And that, to us, is pretty significant. It sets a very, very high bar. And I guess I'd have to express some disappointment at the moment that we aren't able to do more.

However, do appreciate the moratorium, at least. And I guess we'll have to go back and consult on the challenges that you're citing on the second level. But thank you very much for sharing your deliberations.

>>PETER DENGATE THRUSH: Can I just make a quick response to the U.S.? And then I might ask Bruce to answer the particular question of what happened to the working group.

The reserved names list is sort of set up as a management and software sort of concept rather than this. Now, there's no problem at all with reviewing and revisiting that, as you say. The difficulty about doing that -- and this method is the difficulty. If we do it, the sense is if we do it in this case there's no protection against the sort of slippery slope. Somebody has to set a policy and the levels to prevent the next most famous institution from approaching us, and then the next and then the next. And then we have no protection or no answer when a famous brand owner comes and says, well, I have got a famous brand.

So there's a sense of this particular tool becoming misused.

You are absolutely right that they may be afraid that the time it will take to develop a policy on this will be long, but that's just testament, I think, to the difficulty of the issue which equally prohibits us from taking on this kind of policy development on the fly. The very fact that it is difficult is a good reason why we shouldn't do it in a hurry.

But on the other hand we completely accept the principle that institutions like this need protection.

Of course, they have all the other protections that we've created in terms of building these additional brand protection mechanisms that have been created. We don't often stop and say what as extraordinarily different regime we are looking at now than we have with, say, dot com and dot net and dot org, in addition to UDRP and all the other legislative processes, there can be GAC advice and a quick look and if there are any other applications coming through the process, they can be -- there are lots of other mechanisms.

So it's not that these parties are going to be left unprotected. There are lots of other protection mechanisms. We just have a difficulty with, if you like, inventing this mechanism in this way.

Bruce, are you able to help with the question about the -- was there a working group that looked at this in particular, other than perhaps the reserved names working group? Or is that, Suzanne, what you were --

>>BRUCE TONKIN: I assume that's what you are referring to. Yeah, the reserved names working group presented its final report on the 23rd of May 2007, and that's on the ICANN Web site, so I can send you

a link to that.

>>HEATHER DRYDEN: Bertrand? It.

>>BERTRAND DE LA CHAPELLE: Thank you, Heather. Just to add an element to what has been said before. The angle that the board has taken in this topic is in view of the discussions that took place with the GAC and also work to have been done by staff to document this, is the consideration of the nature of those two organizations and the exceptional global public interest that they represent.

As a matter of fact, initially there could be a concern whether this was going to be a list that could extend. And more in-depth analysis has comforted the message that the GAC has sent that these actually are two organizations that have a particularly exceptional status. So the message I want to give is that it is not so much a question of protection of trademark. It is not global protected trademark issue, or not only, certainly. It's fundamentally a recognition of the value and the global public interest value of those organizations, and the desire of the board to make sure that two dangers are taken into account. That because this has been spotted and we wouldn't have found an appropriate method for the first round, a problem at the top level may happen that we would not have the tools to address. Hence, the moratorium, to say we need to discuss that further and not get into a trap. So that's the reason why the first thing was done.

And on the second thing, it's mostly a concern that we absolutely share to prevent misuse of the name of the Red Cross or the Olympic committee at the second level. And a complement to the approach is to say there will be a need to potentially explore with the rest of the community all the mechanisms that can be put in place that do not have to be put in place in the DAG, actually, or the Applicant Guidebook, but that can be put in place to detect, identify, remediate, abuses of registration using those words. So that this is work that can be open, and I am sure and I hope, but I'm sure that registrars and registries that will be applying will be willing to explore the ways to put in place modalities for this.

But this is a different -- a different topic. I wanted to insist on the global public interest identification of those two entities.

>>HEATHER DRYDEN: Further comment, before we move to the next agenda item?

Okay. Peter.

>>PETER DENGATE THRUSH: Thank you, Heather. We've now been through the latest letter. We've completely consumed all of our cocktail hour. I had required the board to be back to work at 7:30, having had dinner, so we're now using the board's dinnertime.

What I suggest we do, then, is you mentioned early on, Mark and others, that you had other issues in your remaining letter. I think it would be helpful to us if you could identify to us which are the most important and in the next few minutes we can perhaps try and cover those. I have the letter and we can respond.

>>HEATHER DRYDEN: In terms of other advice we've provided, it's all important, but having said that, are there ones that GAC members would like to raise here and now?

U.K., please.

>>UNITED KINGDOM: Thanks very much. The comments of 26 May on IP, in addition to proof of use, covered four issues and we had two proposals in the explication of those issues, and two statements of adherence to previous advice to the board, and on all of these we await the board's

response.

I mean, briefly, if I go through them quickly, would that help, or...

Okay. Yeah. I see nods around the room, so I'll proceed.

The first one was that the RFP for the provider of the clearinghouse includes a requirement to assess whether domain names that include a mark at the beginning or end could be included in the clearinghouse services. So should we take them one by one? What's the position on that? Thank you.

>>PETER DENGATE THRUSH: Just looking here, perhaps Kurt or --

>>ROD BECKSTROM: Or Bruce. Bruce or Kurt.

>>PETER DENGATE THRUSH: I think just trying to work on -- we'll try and get someone who can answer all these reasonably quickly, I think, because...

>>KURT PRITZ: Hi, Mark. So I'm going as to start with the clearinghouse. The GAC advice, as I understand it, was that ICANN undertake a postlaunch study on certain -- okay. Go ahead.

>>UNITED KINGDOM: Sorry. We're going through the four areas one by one, so I think if we stick to that procedure here, there will be clarity for all of us, I think.

So the first question -- sorry, the first proposal in the GAC advice is that the RFP for the provider of the clearinghouse includes a requirement to assess whether domain names that include a mark at the beginning or end could be included in the clearinghouse services.

>>KURT PRITZ: Yeah. So very briefly, we agree with that. Now, that is not a change in the guidebook, per se, but it's a change so that we can understand from the clearinghouse provider what would be required in order to include that, you know, exact match plus a key term if that were ever included in the guidebook.

So we agree.

>>UNITED KINGDOM: Thanks very much, Kurt. That's noted. Thanks for your consideration of that.

The second is that ICANN should establish an independent postlaunch review of the clearinghouse one year after the launch of the 75th new gTLD, which inter alia will (a) determine whether the automated system should be enhanced to include key terms associated with the goods or services identified by the mark, and in association with this we request that the review provide a technical report on exact matches plus -- so additional elements to the exact match -- whenever they appear in a domain..

(b) that the review include a consultation on extending the notification period beyond 60 days.

And again, what we would request in association with this advice for this element of the review is that a technical paper be prepared.

(c) the review should undertake an analysis of the impact on the watch services market.

And (d) that the review would assess the resource requirements for the clearinghouse.

So, sorry, it's a rather long list with some sub-elements, but that's a summation of what's in the 26 May comments from the GAC.

>>KURT PRITZ: Yeah. I remember -- I remember it well.

So we agree to undertake those studies also. We were interested in how you arrive at the 75th TLD after one year of operation, but it seems as good as any, and if, when the time comes, that doesn't seem to be the right time to launch the study, we would consult with the GAC, but otherwise, plan to do that.

>>UNITED KINGDOM: Thanks very much. That's well noted and appreciate, again, all your consideration of the several elements in that piece of advice.

The third piece of advice was that the standard of proof required for the URS and the PDDRP should be reduced from clear and convincing evidence to preponderance of evidence, which we've long argued is an appropriate level of standard for this kind of area.

Clear and convincing evidence is a very high standard, appropriate to criminal law, which we feel would be burdensome in the operation of the URS and the UDDRP -- sorry, PDDRP. Thank you.

>>KURT PRITZ: Thanks, Mark. I'm going to report -- report the board discussion.

In the United States, anyway, clear and convincing evidence is also a civil standard, but admittedly higher than preponderance, which to us means 51%.

With regard to the URS, that was developed for cases where there were clear-cut cases of abuse and the -- you know, the discussions in the development of the URS and especially use of the word "clear-cut cases" seem to lend themselves especially well for a very rapid takedown model to require a higher standard than just a preponderance of evidence.

And so the board was very clear there in continuing that standard.

Similarly with PDDRP, that's a very dramatic remedy, where a party can go directly after a registry for domain names where there may or may not be a direct connection, and therefore the board also agreed among themselves that the standard of clear and convincing, higher than just 51%, was more appropriate.

>>UNITED KINGDOM: Thanks for the consideration, and obviously we're disappointed that the GAC advice is being rejected here. I don't know if any of our GAC colleagues want to comment on the rejection of that advice at this stage. To the chair, should I leave that question open before I go to the final part of the -- final area of the advice on IP?

>>HEATHER DRYDEN: Are there comments on that particular point before we move to the next item?

I see none.

Continue, please, U.K.

>>UNITED KINGDOM: Thank you very much.

As I say, we will need to consult within the GAC on that last item.

Fourthly, the GAC advice was that the loser pays threshold should be reset at 15 domains, and the effectiveness of this threshold should be reviewed at the same time as the review of the clearinghouse.

If you'll recall, I think the figure in the guidebook is 26, which we

thought was an unjustifiable high number and we came up with this figure to reset it at 15. Thank you.

>>KURT PRITZ: Thanks, Mark.

This discussion has evolved. After while, at the end, the board recognizing that 26 was the result of a community discussion but seemed somewhat arbitrary, as the number 15 seems somewhat arbitrary for the first round.

The board felt that, you know, it was -- it was acceptable to change the number to 15.

I'd remind the GAC that at one time they -- we had jointly agreed, I think, there didn't need to be a loser pays model, but have recently gone back to that and implemented it, and the guidebook -- my recollection of the very recent board discussion, though, is that we will change that to 15.

>>UNITED KINGDOM: Okay. Thank you. That's a very satisfactory conclusion to this round of detailed and not-so-entertaining issues but very important issues. We've consulted in national administrations with IP policy experts, consulted business, consulted users, and that's a satisfactory point on which to conclude at this opportunity. Thank you.

>>HEATHER DRYDEN: Thank you very much, U.K.

So at this stage, can we conclude this meeting? European Commission.

>>EUROPEAN COMMISSION: As far as we are concerned, yes, we can. I would like to hear when we can expect a response in writing to the GAC communique. That would be useful information. Thank you.

>>HEATHER DRYDEN: A response in writing to the letter we communicated yesterday? Is that the question?

>>PETER DENGATE THRUSH: Some answers may come tomorrow and some answers may follow within a week or so. I'm not quite sure what -- what precision you require. Certainly within a month or two and certainly before Senegal. Some of it will -- there will be a formal response within a reasonable time, I think is the safest thing I can say. If you have a -- unless anyone can help. It's a question of what staff are available to write it and go through and deal with it in the usual way. So within a reasonable time, I think, is probably the answer.

>>HEATHER DRYDEN: Norway, please.

>>NORWAY: Thank you, chair. Does that also include like the issues we haven't been able to cover here from the 26 May letter, also some written responses on those things we haven't been able to cover? That would also be interesting to have responses to. Thank you.

>>PETER DENGATE THRUSH: Yes. It will be a complete answer to all of the outstanding issues that are included in the letter of yesterday and the letter of the 26th. And I'm being told that it may well be as soon as tomorrow in relation to most of it.

>>HEATHER DRYDEN: Okay. So I see no further requests for the floor, so with that, on behalf of the GAC, I would like to thank the board for meeting with us today, and we look forward to the board meeting tomorrow.

>>PETER DENGATE THRUSH: Thanks, Heather. Can I also express that on behalf of all of us, it's been an extraordinary effort and a huge -- as I say, we think we now have, as a result of this, much improvement

in most of the areas that have been discussed as a result of this interaction.

So thank you, Heather, for chairing it. Thank you for the work that's gone into it from the GAC topic leaders and all other members of the GAC and the community. Thank you very much.

Board members, please reconvene in the board working room at 7:30 as arranged. Thank you.

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20 Jun 2011

1. Approval of the New [gTLD](#) Program

Whereas, on 28 November 2005, the [GNSO](#) Council voted unanimously to initiate a policy development process on the introduction of new gTLDs.

Whereas, the [GNSO](#) Committee on the Introduction of New gTLDs addressed a range of difficult technical, operational, legal, economic, and policy questions, and facilitated widespread participation and public comment throughout the policy development process.

Whereas, on 6 September 2007, the [GNSO](#) Council approved by a supermajority vote a motion supporting the 19 recommendations, as a whole, as set out in the Final Report of the [ICANN](#) Generic Names Supporting Organisation on the Introduction of New Generic Top-Level Domains going forward to the [ICANN](#) Board  [<http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>](http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm).

Whereas, the Board instructed staff to review the [GNSO](#) recommendations and determine whether they were capable of implementation, and staff engaged international technical, operational and legal expertise to support the implementation of the policy

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provide the Board with a final version of the implementation proposals for the board and community to approve before the launching the new gTLD application process <[http://www.icann.org/en/minutes/resolutions-26jun08.htm#\\_Toc76113171](http://www.icann.org/en/minutes/resolutions-26jun08.htm#_Toc76113171)>.

Whereas, staff has made implementation details publicly available in the form of drafts of the gTLD Applicant Guidebook and supporting materials for public discussion and comment.

Whereas, the first draft of the Applicant Guidebook was published on 23 October 2008 <<http://www.icann.org/en/topics/new-gtlds/comments-en.htm>>, and the Guidebook has undergone continued substantial revisions based on stakeholder input on multiple drafts.

Whereas, the Board has conducted intensive consultations with the Governmental Advisory Committee (including in Brussels in February 2011, in San Francisco in March 2011, by telephone in May 2011, and in Singapore on 19 June 2011), resulting in substantial agreement on a wide range of issues noted by the GAC, and the Board has directed revisions to the Applicant Guidebook to reflect such agreement.

Whereas, ICANN received letters from the United States Department of Commerce and the European Commission addressing the issue of registry-registrar cross-ownership, and the Board considered the concerns expressed therein. The Board agrees that the potential abuse of significant market power is a serious concern, and discussions with competition authorities will continue.

Whereas, ICANN has consulted with the GAC to find mutually acceptable solutions on areas where the implementation of policy is not consistent with GAC advice, and where necessary has identified its reasons for not incorporating the advice in particular areas, as required by the Bylaws; see <<http://www.icann.org/en/minutes/rationale-gac-response-new-gtld-20jun11-en.pdf>> [PDF, 103 KB].

Whereas, the ICANN community has dedicated countless hours to the review and consideration of numerous implementation issues, by the submission of public comments, participation in working groups, and other consultations.

Whereas, the Board has listened to the input that has been provided by the community, including the supporting organizations and advisory committees, throughout the implementation process.

Whereas, careful analysis of the obligations under the Affirmation of Commitments and the steps taken throughout the implementation process indicates that ICANN has fulfilled the commitments detailed in the Affirmation <<http://www.icann.org/en/documents/affirmation-of-commitments-30sep09-en.htm>>.

Whereas, the Applicant Guidebook posted on 30 May 2011 <<http://www.icann.org/en/topics/new-gtlds/comments-7-en.htm>> includes updates resulting from public comment and from recent GAC advice.

Whereas, the draft New gTLDs Communications Plan <<http://www.icann.org/en/topics/new-gtlds/new-gtlds-communications-plan-30may11-en.pdf>> [PDF, 486 KB] forms the basis of the global outreach and education activities that will be conducted leading up to and during the execution of the program in each of the ICANN geographic regions.

Whereas, the Draft FY12 Operating Plan and Budget <<http://www.icann.org/en/announcements/announcement-17may11-en.htm>> includes a New gTLD Program Launch Scenario, and the Board is prepared to approve the expenditures included in Section 7 of the Draft FY12 Operating Plan and Budget.

Whereas, the Board considers an applicant support program important to ensuring an inclusive and diverse program, and will direct work to implement a model for providing support to potential applicants from developing countries.

Whereas, the Board's Risk Committee has reviewed a comprehensive risk assessment associated with implementing the New gTLD Program, has reviewed the defined strategies for mitigating the identified risks, and will review contingencies as the program moves toward launch.

Whereas, the Board has reviewed the current status and plans for operational readiness and program management within ICANN.

Resolved (2011.06.20.01), the Board authorizes the President and CEO to implement the new gTLD program which includes the following elements:

1. the 30 May 2011 version of the Applicant Guidebook <<http://www.icann.org/en/topics/new-gtlds/comments-7-en.htm>>, subject to the revisions agreed to with the GAC on 19

- June 2011, including: (a) deletion of text in Module 3 concerning GAC advice to remove references indicating that future Early Warnings or Advice must contain particular information or take specified forms; (b) incorporation of text concerning protection for specific requested Red Cross and IOC names for the top level only during the initial application round, until the GNSO and GAC develop policy advice based on the global public interest, and (c) modification of the "loser pays" provision in the URS to apply to complaints involving 15 (instead of 26) or more domain names with the same registrant; the Board authorizes staff to make further updates and changes to the Applicant Guidebook as necessary and appropriate, including as the possible result of new technical standards, reference documents, or policies that might be adopted during the course of the application process, and to prominently publish notice of such changes;
2. the Draft New gTLDs Communications Plan as posted at <http://www.icann.org/en/topics/new-gtlds/new-gtlds-communications-plan-30may11-en.pdf> [PDF, 486 KB], as may be revised and elaborated as necessary and appropriate;
  3. operational readiness activities to enable the opening of the application process;
  4. a program to ensure support for applicants from developing countries, with a form, structure and processes to be determined by the Board in consultation with stakeholders including: (a) consideration of the GAC recommendation for a fee waiver corresponding to 76 percent of the \$185,000 USD evaluation fee, (b) consideration of recommendations of the ALAC and GNSO as chartering organizations of the Joint Applicant Support (JAS) Working Group, (c) designation of a budget of up to \$2 million USD for seed funding, and creating opportunities for other parties to provide matching funds, and (d) the review of additional community feedback, advice from ALAC, and recommendations from the GNSO following their receipt of a Final Report from the JAS Working Group (requested in time to allow staff to develop an implementation plan for the Board's consideration at its October 2011 meeting in Dakar, Senegal), with the goal of having a sustainable applicant support system in place before the opening of the application window;

5. a process for handling requests for removal of cross-ownership restrictions on operators of existing gTLDs who want to participate in the new gTLD program, based on the "Process for Handling Requests for Removal of Cross-Ownership Restrictions for Existing gTLDs" <<http://www.icann.org/en/announcements/announcement-02may11-en.htm>>, as modified in response to comments <<http://www.icann.org/en/tlds/process-cross-ownership-gtlds-en.htm>> (a redline of the Process to the earlier proposal is provided at <<http://www.icann.org/en/minutes/process-cross-ownership-restrictions-gtlds-20jun11-en.pdf>> [PDF, 97 KB]); consideration of modification of existing agreements to allow cross-ownership with respect to the operation of existing gTLDs is deferred pending further discussions including with competition authorities;
6. the expenditures related to the New gTLD Program as detailed in section 7 of the Draft FY12 Operating Plan and Budget <<http://www.icann.org/en/announcements/announcement-17may11-en.htm>>; and
7. the timetable as set forth in the attached graphic <<http://www.icann.org/en/minutes/timeline-new-gtld-program-20jun11.pdf>> [PDF, 167 KB], elements of which include the New gTLD application window opening on 12 January 2012 and closing on 12 April 2012, with the New gTLD Communications Plan beginning immediately.

Resolved (2011.06.20.02), the Board and the GAC have completed good faith consultations in a timely and efficient manner under the ICANN Bylaws, Article XI, Section 2.j. As the Board and the GAC were not able to reach a mutually acceptable solution on a few remaining issues, pursuant to ICANN Bylaws, Article XI, Section 2.k, the Board incorporates and adopts as set forth in the document describing the remaining areas of difference between ICANN's Board and the GAC <<http://www.icann.org/en/minutes/rationale-gac-response-new-gtld-20jun11-en.pdf>> [PDF, 103 KB] the reasons why the GAC advice was not followed. The Board's statement is without prejudice to the rights or obligations of GAC members with regard to public policy issues falling within their responsibilities.

Resolved (2011.06.20.03), the Board wishes to express its deep appreciation to the ICANN community, including the members of the GAC, for the extraordinary work it has invested in crafting the New

gTLD Program in furtherance of ICANN's mission and core values, and counts on the community's ongoing support in executing and reviewing the program.

### Rationale for Resolutions 2011.06.20.01-2011.06.20.03

\* Note: The Rationale is not final until approved with the minutes of the Board meeting.

[Rationale for Approval of the Launch of the New gTLD Program](#) [PDF, 624 KB]

  
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RSS Feeds

  
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<p><b>Who We Are</b></p> <ul style="list-style-type: none"> <li>Get Started</li> <li>Learning</li> <li>Participate</li> <li>Groups</li> <li>Board</li> <li>President's Corner</li> <li>Staff</li> <li>Careers</li> <li>Newsletter</li> <li>Development and Public Responsibility</li> </ul>	<p><b>Contact Us</b></p> <ul style="list-style-type: none"> <li>Offices</li> <li>Global Support</li> <li>Security Team</li> <li>PGP Keys</li> <li>Certificate Authority</li> <li>Registry Liaison</li> <li>AOC Review</li> <li>Organizational Reviews</li> <li>Request a Speaker</li> <li>For Journalists</li> </ul>	<p><b>Accountability &amp; Transparency</b></p> <ul style="list-style-type: none"> <li>Accountability Mechanisms</li> <li>Independent Review Process</li> <li>Request for Reconsideration</li> <li>Ombudsman</li> </ul>	<p><b>Governance</b></p> <ul style="list-style-type: none"> <li>Documents</li> <li>Agreements</li> <li>AOC Review</li> <li>Annual Report</li> <li>Financials</li> <li>Document Disclosure</li> <li>Planning</li> <li>Dashboard Beta</li> <li>RFPs</li> <li>Litigation</li> <li>Correspondence</li> </ul>	<p><b>Help</b></p> <ul style="list-style-type: none"> <li>Dispute Resolution</li> <li>Domain Name Dispute Resolution</li> <li>Name Collision</li> <li>Registrar Problems</li> <li>WHOIS</li> </ul>
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**RESPONDENT'S EXHIBIT**



## Governmental Advisory Committee

Dakar, 27 October 2011

### GAC Communiqué – Dakar

#### I. Introduction

The Governmental Advisory Committee (GAC) of the Internet Corporation for Assigned Names and Numbers (ICANN) met in Dakar, Senegal during the week of October 22-27, 2011. Forty-nine Governments participated in the meeting: 46 present and 3 by remote participation and six Observers. The GAC expresses warm thanks to the local hosts, The Ministry of Communication, Telecommunications and Information Technology (MICOMTELTIC) and the Regulatory Authority for Telecommunications and Post (ARTP) for their hospitality in organizing the meeting and ICANN for supporting the GAC during the meeting.

#### II. New gTLDs

The GAC further discussed and decided on the formulation of GAC advice for inclusion in Module 3 of the Applicant Guidebook [Annex I].

During the discussion ICANN Staff underlined their understanding that advice regarding the definition of Geographic Names should be adopted by the GAC.

The GAC congratulates the JAS working group on the final report and recommendations, which are consistent with GAC advice. The GAC looks forward to the Board providing clear timelines for implementation of the recommendations to enable needy applicants to join in full and meaningfully in the first round.

The GAC raised concern about the unpredictability of the actual number of applications that governments would have to digest to proceed after the end of the application period. The GAC made clear, that if the number of applications published by ICANN significantly exceeds 500, GAC members might not be able to process a very large number of applications in the very short early warning procedure and in the limited time for issuing GAC advice on all these strings.

Further, the GAC asked ICANN for clarification about its intention to process these applications in batches of 500, in the case that there are more than 500 applications. The GAC urges ICANN to clarify the procedures and implications for applicants being processed in different batches, as this might have implications for competition and applicants' business models.

Following presentations by the ICANN staff and the Security and Stability Advisory Committee, the GAC took note of the SSAC consideration of the combined impact of new gTLDs and other changes such as the introduction of IPv6, DNSSEC and IDNs to the root. The GAC welcomes the confirmation of the commitment by the ICANN Board to provide a full report with a complete analysis, including all underlying data, of the root system scalability well before the opening of the new gTLDs application round. The GAC further welcomes the confirmation of the commitment by the Board to evaluate the impact on the system after the 1st round, with the understanding that the launch of a second round is contingent on the outcome of this evaluation, in particular the absence of negative effects on the root system. The GAC believes that in order for this evaluation to be effective, an appropriate and trustable monitoring system needs to be in place.

In its discussions with the Board regarding the Communication Plan for new gTLDs, the GAC emphasised the importance of promoting the gTLDs application round in all countries, including developing countries. The GAC suggested that levels of awareness be continually assessed and reviewed, and priorities and target areas under the Plan be adjusted accordingly in the run up to the launch of the round.

The GAC welcomed the assurances received from the Board and staff that the evaluation of applications will ensure a level playing field for applicants and that any conflicts of interest will be identified and avoided accordingly.

### **III. Law Enforcement (LEA) Recommendations**

In recent years, the Internet has grown to have over two billion users and be a significant contributor to the global economy.

Cyber-crime is a growing threat to the security and stability of the Internet, with broad and direct public policy impacts. Recent estimates suggest that the direct financial impact of cyber crime is extremely significant.

Law enforcement agencies have identified a series of specific problems which are limiting their ability to address this growing problem.

As part of this, law enforcement agencies have identified specific areas of concern in the ICANN context, relating to contractual weaknesses and a lack of necessary due diligence.

To address these urgent problems, in 2009 law enforcement agencies made 12 concrete recommendations to reduce the risk of criminal abuse of the domain name system.

These recommendations were informally socialized with the registrar community, the GAC, and with ICANN compliance staff over the course of several months, before the GAC advised the Board in its Brussels communiqué that it formally endorsed the recommendations.

Direct exchanges between law enforcement agencies and registrars continued in September 2010 in Washington D.C., in February 2011 in Brussels, and during the March and June 2011 ICANN meetings.

As a complement to the June exchanges in Singapore, the GAC urged the Board to support actions necessary to implement those recommendations as a matter of urgency.

To date, none of the recommendations have been implemented, and the risks remain. The GAC therefore advises the ICANN Board to take the necessary steps to ensure that ICANN's multistakeholder process effectively addresses these GAC-endorsed proposals as a matter of extreme urgency.

#### **IV. Accountability and Transparency Review Team Recommendations (ATRT)**

The GAC welcomes the update provided by ICANN staff on the ATRT Recommendations progress and the suggestions presented with regards to the implementation of recommendations 9 through 14 on the GAC role, effectiveness and interaction with the Board.

The GAC looks forward to an expedited implementation of the Joint Working Group and ATRT recommendations and is keen to continue working with the Board on the Recommendations related to the GAC.

#### **V. Conflict of interest**

The GAC expresses extreme concern about the inadequacy of the existing rules of ethics and conflict of interest in the light of recent events and therefore welcomes the approval of the motion by the Board Governance Committee on 15 September 2011 concerning "ethics and conflicts of interest". The GAC looks forward to the publication of a timeline with clear and effective actions as a conclusion of the Dakar meeting or shortly thereafter. In order to ensure the legitimacy and sustainability of the multi-stakeholder model as enshrined in ICANN, the GAC underlines the extreme urgency of putting in place effective and enforceable rules on conflicts of interest.

The GAC will keep this important issue under review and may come forward with further advice before the Costa Rica GAC meetings.

#### **VI. Meeting with the Generic Names Supporting Organisation (GNSO)**

The GAC and the GNSO exchanged views on a number of issues, beginning with an overview by ICANN staff of the GNSO policy development process. Consistent with the recommendations of the Accountability and Transparency Review Team and the related GAC-Board Joint Working Group, the GAC stressed its interest in ensuring that GAC views are provided and taken into account at early stages in the policy development process.

The meeting also discussed the implementation of the Law Enforcement Agency (LEA) recommendations to mitigate Domain Name System abuse, which were endorsed by the GAC in June 2010. The GAC expressed its disappointment that registrars were only able to report on their consideration of three of the twelve LEA Recommendations. Further, the reported progress fell substantially short of what GAC members believed had been achieved during its meetings with registrars in Singapore in June 2011. The GAC also expressed concern that there was no clarity on how the other nine recommendations were being progressed, despite the registrars' agreement at the Singapore meeting to provide regular status

reports. The GAC informed the GNSO Council of its intention to request the ICANN Board to take prompt and concrete action to implement the GAC/LEA recommendations.

The meeting also addressed the GAC's proposal to the GNSO on the protection mechanism for the International Olympic Committee and Red Cross/Red Crescent names at the top and second levels. The GAC requested feedback from the GNSO on the proposal as a first step in collaborating on advice for the ICANN Board in this regard, consistent with the ICANN Board Resolution in Singapore.

The GAC looks forward to further engagement with the GNSO to work more effectively within the ICANN processes and reinforce the sustainability of the multi-stakeholder model.

### **VII. Meeting with the At-Large Advisory Group (ALAC)**

The GAC met with the ALAC to discuss Conflict of Interest issues within the ICANN Board and staff. The GAC agrees that this is a critical matter that needs to be addressed as a high priority within the community.

The GAC and ALAC also discussed the Joint Applicant Support (JAS) Working Group as well as the ALAC and GAC Joint Statement. The GAC expects a decision to be taken for implementation in time for the opening of the first new gTLD round.

In light of the common interest of advancing improvements in the ICANN model, the GAC and ALAC also discussed the ongoing work of the Accountability and Transparency Review Team (ATRT). The GAC shared the areas identified as a priority in the framework of the ATRT and the Joint Working Group recommendations, looking forward to an expedited implementation.

### **VIII. GAC Operating Principles**

The GAC amended Principle 47 of its Operating Principles clarifying its understanding of consensus. The definition now introduced derives from United Nations practice and understands consensus as adopting decisions by general agreement in the absence of formal objections. The GAC noted that according to UN practice individual members may make reservations, declarations, statements of interpretation and/or statements of position regarding a consensus decision, provided such texts do not represent an objection to the consensus [Annex II].

### **IX. Joint session with the Country Code Names Supporting Organization (ccNSO)**

The GAC met with the ccNSO to discuss the progress and ongoing work of the Framework of Interpretation cross-community Working Group (Fol) on delegation and redelegation, and the mechanisms for the GAC to provide feedback and contribute to this work within a timeline that the ccNSO has provided. In addition, the ccNSO shared an update of its current work areas and its organisational structure.

The GAC is eager to further engage with the ccNSO to provide timely inputs on the different stages of the Fol work.

**X. Meeting with the Security and Stability Advisory Committee (SSAC)**

The GAC thanks the SSAC for providing an update on its work including blocking and reputation systems, WHOIS matters and single label domain names. Further, the GAC thanks the SSAC Chair for discussions on Root Zone Scaling and Resource Public Key Infrastructure (RPKI).

The GAC looks forward to receiving further updates on DNS blocking matters and other relevant security and stability related matters.

**XI. Meeting with the Nominating Committee (NomCom)**

The GAC met with the Nominating Committee and discussed the skill-sets needed of an ICANN Director, as outlined in the Accountability and Transparency Review Team (ATRT) recommendations to improve the selection process. The NomCom invited individual GAC members to provide further inputs.

**XII. Election of Vice-chairs**

The GAC has reelected the current vice-chairs, Choon-Sai Lim (Singapore), Maria Häll (Sweden) and Alice Munyua (Kenya) to continue their mandate for another year.

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The GAC warmly thanks all those among the ICANN community who have contributed to the dialogue with the GAC in Dakar.

The GAC will meet during the period of the 43<sup>rd</sup> ICANN meeting in San José, Costa Rica.

### **Applicant Guidebook Module 3.1: GAC Advice on New gTLDs**

ICANN's Governmental Advisory Committee was formed to consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN's policies and various laws and international agreements or where they may affect public policy issues.

The process for GAC Advice on new gTLDs is intended to address applications that are identified by governments to be problematic, e.g., that potentially violate national law or raise sensitivities.

GAC members can raise concerns about any application to the GAC. The GAC as a whole will consider concerns raised by GAC members, and agree on GAC advice to forward to the ICANN Board of Directors.

The GAC can provide advice on any application. For the Board to be able to consider the GAC advice during the evaluation process, the GAC advice would have to be submitted by the close of the Objection Filing Period (see Module 1).

GAC Advice may take one of the following forms:

*I. The GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved.*

*II. The GAC advises ICANN that there are concerns about a particular application "dot-example". The ICANN Board is expected to enter into dialogue with the GAC to understand the scope of concerns. The ICANN Board is also expected to provide a rationale for its decision.*

*III. The GAC advises ICANN that a particular application should not proceed unless remediated. This will raise a strong presumption for the Board that the application should not proceed unless there is a remediation method available in the Guidebook (such as securing one or more government's approval) that is implemented by the applicant.*

**Operating Principles Article XII Principle 47**

The GAC works on the basis of seeking consensus among its membership. Consistent with United Nations practice<sup>1</sup>, consensus is understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection. Where consensus is not possible, the Chair shall convey the full range of views expressed by members to the ICANN Board.

[Foot note to UN practice be inserted]

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<sup>1</sup> Statements by GAC members related to such advice will be posted on the GAC website.

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**RESPONDENT'S EXHIBIT**

Section	Topic	Change to Text	Rationale and Comments
<i>Module 1</i>			
1.1.2.4	GAC Early Warning	<p>Concurrent with the 60-day comment period, ICANN’s Governmental Advisory Committee (GAC) may issue a GAC Early Warning notice concerning an application. This provides the applicant with an indication that the application is seen as potentially sensitive or problematic by one or more governments.</p> <p>The GAC Early Warning is a notice only. It is not a formal objection, nor does it directly lead to a process that can result in rejection of the application. However, a GAC Early Warning should be taken seriously as it raises the likelihood that the application could be the subject of GAC Advice on New gTLDs (see subsection 1.1.2.7) or of a formal objection (see subsection 1.1.2.6) at a later stage in the process.</p> <p>A GAC Early Warning typically results from a notice to the GAC by one or more governments that an application might be problematic, e.g., potentially violate national law or raise sensitivities. A GAC Early Warning may be issued for any reason.<sup>1</sup> The GAC may then send that notice to the Board – constituting the GAC Early Warning. ICANN will notify applicants of GAC Early Warnings as soon as practicable after receipt from the GAC. The GAC</p>	<p>Added clarification to specify that delivery refers to the date the GAC Early Warning notice is delivered to the applicant.</p>

<sup>1</sup> While definitive guidance has not been issued, the GAC has indicated that strings that could raise sensitivities include those that "purport to represent or that embody a particular group of people or interests based on historical, cultural, or social components of identity, such as nationality, race or ethnicity, religion, belief, culture or particular social origin or group, political opinion, membership of a national minority, disability, age, and/or a language or linguistic group (non-exhaustive)" and "those strings that refer to particular sectors, such as those subject to national regulation (such as .bank, .pharmacy) or those that describe or are targeted to a population or industry that is vulnerable to online fraud or abuse."

Section	Topic	Change to Text	Rationale and Comments
		<p>Early Warning notice may include a nominated point of contact for further information.</p> <p>GAC consensus is not required for a GAC Early Warning to be issued. Minimally, the GAC Early Warning must be provided in writing to the ICANN Board, and be clearly labeled as a GAC Early Warning. This may take the form of an email from the GAC Chair to the ICANN Board. For GAC Early Warnings to be most effective, they should include the reason for the warning and identify the objecting countries.</p> <p>Upon receipt of a GAC Early Warning, the applicant may elect to withdraw the application for a partial refund (see subsection 1.5.1), or may elect to continue with the application (this may include meeting with representatives from the relevant government(s) to try to address the concern). To qualify for the refund described in subsection 1.5.1, the applicant must provide notification to ICANN of its election to withdraw the application within 21 calendar days of the <u>date of</u> GAC Early Warning delivery <u>to the applicant</u>.</p> <p>To reduce the possibility of a GAC Early Warning, all applicants are encouraged to identify potential sensitivities in advance of application submission, and to work with the relevant parties (including governments) beforehand to mitigate concerns related to the application.</p>	
1.1.2.5	Initial Evaluation	Initial Evaluation will begin immediately after the	Updated to provide additional detail on the batching

Section	Topic	Change to Text	Rationale and Comments
		<p>administrative completeness check concludes. All complete applications will be reviewed during Initial Evaluation. At the beginning of this period, background screening on the applying entity and the individuals named in the application will be conducted. Applications must pass this step in conjunction with the Initial Evaluation reviews.</p> <p>There are two main elements of the Initial Evaluation:</p> <ol style="list-style-type: none"> <li>1. String reviews (concerning the applied-for gTLD string). String reviews include a determination that the applied-for gTLD string is not likely to cause security or stability problems in the DNS, including problems caused by similarity to existing TLDs or reserved names.</li> <li>2. Applicant reviews (concerning the entity applying for the gTLD and its proposed registry services). Applicant reviews include a determination of whether the applicant has the requisite technical, operational, and financial capabilities to operate a registry.</li> </ol> <p>By the conclusion of the Initial Evaluation period, ICANN will post notice of all Initial Evaluation results. Depending on the volume of applications received, such notices may be posted in batches over the course of the Initial Evaluation period.</p> <p>The Initial Evaluation is expected to be completed for all applications in a period of approximately 5 months. If the volume of applications received significantly exceeds 500,</p>	<p>process, based on Board resolution <a href="http://www.icann.org/en/minutes/resolutions-08dec11-en.htm#1.2">http://www.icann.org/en/minutes/resolutions-08dec11-en.htm#1.2</a>.</p>

Section	Topic	Change to Text	Rationale and Comments
		<p>applications will be processed in batches and the 5-month timeline will not be met. The first batch will be limited to 500 applications and subsequent batches will be limited to 400 to account for capacity limitations due to managing extended evaluation, string contention, and other processes associated with each previous batch.</p> <p>If batching is required, a <u>secondary time-stamp</u> process <del>external to the application submission process</del> will be employed to establish <u>the batches evaluation priority</u>. <u>(Batching priority will not be given to an application based on the time at which the application was submitted to ICANN, nor will batching priority be established based on a random selection method.)</u></p> <p><u>The secondary time-stamp process will require applicants to obtain a time-stamp through a designated process that will occur after the close of the application submission period. This process will be based on an online ticketing system or other objective criteria. The secondary time stamp process will occur, if required, according to the details to be published on ICANN's website. (Upon the Board's approval of a final designation of the operational details of the "secondary timestamp" batching process, the final plan will be added as a process within the Applicant Guidebook.)</u></p> <p>If batching is required, the String Similarity review will be completed on all applications prior to the establishment of evaluation priority batches. For applications identified as part of a contention set, the entire contention set will be</p>	

Section	Topic	Change to Text	Rationale and Comments
		<p>kept together in the same batch.</p> <p>If batches are established, ICANN will post updated process information and an estimated timeline.</p> <p>Note that the processing constraints will limit delegation rates to a steady state even in the event of an extremely high volume of applications. The annual delegation rate will not exceed 1,000 per year in any case, no matter how many applications are received.<sup>2</sup></p>	
1.1.2.7	Receipt of GAC Advice on New gTLDs	<p>The GAC may provide public policy advice directly to the ICANN Board on any application. The procedure for GAC Advice on New gTLDs described in Module 3 indicates that, to be considered by the Board during the evaluation process, the GAC Advice on New gTLDs must be submitted by the close of the objection filing period. A GAC Early Warning is not a prerequisite to use of the GAC Advice process.</p> <p><del>If the Board receives GAC Advice on New gTLDs stating that includes a consensus statement<sup>3</sup> that it is the consensus of the GAC that a particular application should not proceed, this will create a strong presumption for the ICANN Board that the application should not be approved. from the GAC that an application should not proceed as</del></p>	<p>Updated for consistency with the formulation of GAC advice, as detailed at <a href="https://gacweb.icann.org/download/attachments/4816912/Communique+Dakar+-+27+October+2011.pdf?version=1&amp;modificationDate=1319796551000">https://gacweb.icann.org/download/attachments/4816912/Communique+Dakar+-+27+October+2011.pdf?version=1&amp;modificationDate=1319796551000</a>.</p>

<sup>2</sup> See "Delegation Rate Scenarios for New gTLDs" at <http://icann.org/en/topics/new-gtlds/delegation-rate-scenarios-new-gtlds-06oct10-en.pdf> for additional discussion.

~~<sup>3</sup> The GAC will clarify the basis on which consensus advice is developed.~~

Section	Topic	Change to Text	Rationale and Comments
		<p><del>submitted (or other terms created by the GAC to express that intent), and that includes a thorough explanation of the public policy basis for such advice, will create a strong presumption for the Board that the application should not be approved.</del> If the Board does not act in accordance with this type of advice, it must provide rationale for doing so.</p> <p>See Module 3 for additional detail on the procedures concerning GAC Advice on New gTLDs.</p>	
1.1.6	Subsequent Application Rounds	<p>ICANN’s goal is to launch subsequent gTLD application rounds as quickly as possible. The exact timing will be based on experiences gained and changes required after this round is completed. The goal is for the next application round to begin within one year of the close of the application submission period for the initial round.</p> <p>ICANN has committed to reviewing the effects of the New gTLD Program on the operations of the root zone system after the first application round, and will defer the delegations in a second application round until it is determined that the delegations resulting from the first round did not jeopardize root zone system security or stability.</p> <p><u>It is the policy of ICANN that there be subsequent application rounds, and that a systemized manner of applying for gTLDs be developed in the long term.</u></p>	Clarification in response to questions received. This is in accordance with the GNSO policy advice that “applications must initially be assessed in rounds until the scale of demand is clear.”
1.2.1	Eligibility	Established corporations, organizations, or institutions in good standing may apply for a new gTLD. Applications from	Updated to provide additional detail on steps that may be required of applicants during the background screening

Section	Topic	Change to Text	Rationale and Comments
		<p>individuals or sole proprietorships will not be considered. Applications from or on behalf of yet-to-be-formed legal entities, or applications presupposing the future formation of a legal entity (for example, a pending Joint Venture) will not be considered.</p> <p>ICANN has designed the New gTLD Program with multiple stakeholder protection mechanisms. Background screening, features of the gTLD Registry Agreement, data and financial escrow mechanisms are all intended to provide registrant and user protections.</p> <p>The application form requires applicants to provide information on the legal establishment of the applying entity, as well as the identification of directors, officers, partners, and major shareholders of that entity. The names and positions of individuals included in the application will be published as part of the application; other information collected about the individuals will not be published.</p> <p>Background screening at both the entity level and the individual level will be conducted for all applications to confirm eligibility. This inquiry is conducted on the basis of the information provided in questions 1-11 of the application form. ICANN may take into account information received from any source if it is relevant to the criteria in this section. <u>If requested by ICANN, all applicants will be required to obtain and deliver to ICANN and ICANN's background screening vendor any consents or agreements of the entities and/or individuals named in questions 1-11 of the application form necessary to conduct background</u></p>	<p>process, based on discussions with potential service providers.</p>

Section	Topic	Change to Text	Rationale and Comments
		<p><u>screening activities.</u></p> <p>ICANN will perform background screening in only two areas: (1) General business diligence and criminal history; and (2) History of cybersquatting behavior. The criteria used for criminal history are aligned with the “crimes of trust” standard sometimes used in the banking and finance industry.</p>	
1.2.2	Required Documents	<p>All applicants should be prepared to submit the following documents, which are required to accompany each application:</p> <ol style="list-style-type: none"> <li>1. <b>Proof of legal establishment</b> – Documentation of the applicant’s establishment as a specific type of entity in accordance with the applicable laws of its jurisdiction.</li> <li>2. <b>Financial statements</b> – Applicants must provide audited or independently certified financial statements for the most recently completed fiscal year for the applicant. In some cases, unaudited financial statements may be provided.</li> </ol> <p><u>As indicated in the relevant questions, s</u>Supporting documentation should be submitted in the original language. English translations are not required.</p> <p>All documents must be valid at the time of submission. Refer to the Evaluation Criteria, attached to Module 2, for additional details on the requirements for these documents.</p>	<p>Updated to indicate that clarification regarding which materials should be submitted in the original language and which must be submitted in English will be included as part of the application questions where this is relevant.</p>

Section	Topic	Change to Text	Rationale and Comments
		<p>Some types of supporting documentation are required only in certain cases:</p> <ol style="list-style-type: none"> <li data-bbox="554 427 1251 740"> <p><b>1. <i>Community endorsement</i></b> – If an applicant has designated its application as community-based (see section 1.2.3), it will be asked to submit a written endorsement of its application by one or more established institutions representing the community it has named. An applicant may submit written endorsements from multiple institutions. If applicable, this will be submitted in the section of the application concerning the community-based designation.</p> <p>At least one such endorsement is required for a complete application. The form and content of the endorsement are at the discretion of the party providing the endorsement; however, the letter must identify the applied-for gTLD string and the applying entity, include an express statement of support for the application, and supply the contact information of the entity providing the endorsement.</p> <p>Written endorsements from individuals need not be submitted with the application, but may be submitted in the application comment forum.</p> </li> <li data-bbox="554 1247 1251 1380"> <p><b>2. <i>Government support or non-objection</i></b> – If an applicant has applied for a gTLD string that is a geographic name (as defined in this Guidebook), the applicant is required to submit documentation of support for or non-</p> </li> </ol>	

Section	Topic	Change to Text	Rationale and Comments
		<p>objection to its application from the relevant governments or public authorities. Refer to subsection 2.2.1.4 for more information on the requirements for geographic names. If applicable, this will be submitted in the geographic names section of the application.</p> <p>3. <b>Documentation of third-party funding commitments</b> – If an applicant lists funding from third parties in its application, it must provide evidence of commitment by the party committing the funds. If applicable, this will be submitted in the financial section of the application.</p>	
1.2.10	Resources for Applicant Assistance	<p>A variety of support resources are available to gTLD applicants. <del>For example, ICANN is establishing a means for providing financial assistance will be available to a limited number of eligible applicants, through a process independent of this Guidebook.</del></p> <p><u>To request financial assistance, applicants must submit a separate financial assistance application in addition to the gTLD application form. To be eligible for consideration, all financial assistance applications must be received by 23:59 UTC 12 April 2012. Financial assistance applications will be evaluated and scored against pre-established criteria. Details and instructions for the financial assistance application process will be available on ICANN’s website.</u></p> <p>In addition, ICANN <del>will maintain</del> a webpage as an informational resource for applicants seeking assistance, and organizations offering support. <del>More information will</del></p>	<p>Updated to provide additional detail concerning availability of financial assistance for qualified applicants, in accordance with Board resolution <a href="http://www.icann.org/en/minutes/resolutions-08dec11-en.htm#1.1">http://www.icann.org/en/minutes/resolutions-08dec11-en.htm#1.1</a>.</p>

Section	Topic	Change to Text	Rationale and Comments
		<p><del>be available on ICANN’s website at <a href="http://www.icann.org/en/topics/new_gtld_program.htm">http://www.icann.org/en/topics/new_gtld_program.htm</a>.<sup>4</sup></del>  <del>See <a href="http://newgtlds.icann.org/applicants/candidate-support">http://newgtlds.icann.org/applicants/candidate-support</a> for details on these resources.</del></p>	
1.3.2	IDN Tables	No text changes	Updated link in footnote 10.
1.4	Submitting an Application	<p>Applicants may complete the application form and submit supporting documents using ICANN’s TLD Application System (TAS). To access the system, each applicant must first register as a TAS user.</p> <p>As TAS users, applicants will be able to provide responses in open text boxes and submit required supporting documents as attachments. Restrictions on the size of attachments as well as the file formats are included in the instructions on the TAS site.</p> <p><u>Except where expressly provided within the question, all application materials must be submitted in English.</u></p> <p>ICANN will not accept application forms or supporting materials submitted through other means than TAS (that is, hard copy, fax, email), unless such submission is in accordance with specific instructions from ICANN to applicants.</p>	Updated to provide clarification regarding the general requirement for application materials to be submitted in English, except where indicated in the relevant application questions.
1.5.1	gTLD Evaluation	The gTLD evaluation fee is required from all applicants. This	Fees for Community Priority Evaluation are in the form of a

<sup>4</sup>~~The Joint SO/AC New gTLD Applicant Support Working Group is currently developing recommendations for support resources that may be available to gTLD applicants. Information on these resources will be published on the ICANN website once identified.~~

Section	Topic	Change to Text	Rationale and Comments
	Fee	<p>fee is in the amount of USD 185,000. The evaluation fee is payable in the form of a 5,000 deposit submitted at the time the user requests an application slot within TAS, and a payment of the remaining 180,000 submitted with the full application. ICANN will not begin its evaluation of an application unless it has received the full gTLD evaluation fee by <b>23:59 UTC 12 April 2012</b>.</p> <p>The gTLD evaluation fee is set to recover costs associated with the new gTLD program. The fee is set to ensure that the program is fully funded and revenue neutral and is not subsidized by existing contributions from ICANN funding sources, including generic TLD registries and registrars, ccTLD contributions and RIR contributions.</p> <p>The gTLD evaluation fee covers all required reviews in Initial Evaluation and, in most cases, any required reviews in Extended Evaluation. If an extended Registry Services review takes place, an additional fee will be incurred for this review (see section 1.5.2). There is no additional fee to the applicant for Extended Evaluation for geographic names, technical and operational, or financial reviews. <del>The evaluation fee also covers community priority evaluation fees in cases where the applicant achieves a passing score.</del></p>	<p>deposit, which is refunded if the applicant receives a passing score in the Community Priority Evaluation. Based on questions received, reference to the deposit as part of the gTLD evaluation fee seemed to cause confusion and this reference was removed.</p>
1.5.1	Refunds	<p>An applicant that wishes to withdraw an application must initiate the process through TAS <del>and submit the required form to request a refund, including agreement to the terms and conditions for withdrawal.</del> <u>Withdrawal of an application is final and irrevocable.</u> Refunds will only be issued to the organization that submitted the original payment. All refunds are paid by wire transfer. Any bank</p>	<p>This section is updated to provide clarity to applicants on the provisions relevant to withdrawal of an application.</p>

Section	Topic	Change to Text	Rationale and Comments
		transfer or transaction fees incurred by ICANN, <u>or any unpaid evaluation fees</u> , will be deducted from the amount paid. <u>Any refund paid will be in full satisfaction of ICANN's obligations to the applicant. The applicant will have no entitlement to any additional amounts, including for interest or currency exchange rate changes.</u>	
<i>Module 2</i>			
2.2.1.3.2	String Requirements (Requirements for Internationalized Domain Names)	<p>2.1 The label must be an A-label as defined in IDNA, converted from (and convertible to) a U-label that is consistent with the definition in IDNA, and further restricted by the following, non-exhaustive, list of limitations:</p> <p>2.1.1 Must be a valid A-label according to IDNA.</p> <p>2.1.2 The derived property value of all codepoints used in the U-label, as defined by IDNA, must be PVALID or CONTEXT (accompanied by unambiguous contextual rules).<sup>5</sup></p> <p>2.1.3 The general category of all codepoints, as defined by IDNA, must be one of (Li, Lo, Lm, Mn, <u>Mc</u>).</p> <p>2.1.4 The U-label must be fully compliant with Normalization Form C, as described in <i>Unicode Standard Annex #15: Unicode Normalization Forms</i>.</p>	The text of 2.1.3, drawn from ongoing IETF discussions, required that the general category of all code points in an IDN U-label must be one of (Li, Lo, Lm, Mn). The Mc (Mark, spacing combining) category is similar to the Mn (Mark, nonspacing) category, and the exclusion of all code points with category Mc prevents a number of possible characters in Devanagari and other scripts from being available in gTLD labels. The relevant Internet Draft ( <a href="http://tools.ietf.org/html/draft-li-man-tld-names-06">http://tools.ietf.org/html/draft-li-man-tld-names-06</a> ) has been updated to include the Mc category and this section has been correspondingly updated. Note that this requirement does not mean that <u>every</u> character in those categories would be allowable, but only those valid according to IDNA.

<sup>5</sup> It is expected that conversion tools for IDNA will be available before the Application Submission period begins, and that labels will be checked for validity under IDNA. In this case, labels valid under the previous version of the protocol (IDNA2003) but not under IDNA will not meet this element of the requirements. Labels that are valid under both versions of the protocol will meet this element of the requirements. Labels valid under IDNA but not under IDNA2003 may meet the requirements; however, applicants are strongly advised to note that the duration of the transition period between the two protocols cannot presently be estimated nor guaranteed in any specific timeframe. The development of support for IDNA in the broader software applications environment will occur gradually. During that time, TLD labels that are valid under IDNA, but not under IDNA2003, will have limited functionality.

Section	Topic	Change to Text	Rationale and Comments
		<p>See also examples in <a href="http://unicode.org/faq/normalization.html">http://unicode.org/faq/normalization.html</a>.</p> <p>2.1.5 The U-label must consist entirely of characters with the same directional property, or fulfill the requirements of the Bidi rule per RFC 5893.</p>	
2.2.1.3.2	String Requirements (Requirements for Internationalized Domain Names)	<p>2.1 The label must meet the relevant criteria of the ICANN <i>Guidelines for the Implementation of Internationalised Domain Names</i>. See <a href="http://www.icann.org/en/topics/idn/implementation-guidelines.htm">http://www.icann.org/en/topics/idn/implementation-guidelines.htm</a>. This includes the following, non-exhaustive, list of limitations:</p> <p style="padding-left: 40px;">2.1.1 All code points in a single label must be taken from the same script as determined by the Unicode Standard Annex #24: Unicode Script Property (See <a href="http://www.unicode.org/reports/tr24/">http://www.unicode.org/reports/tr24/</a>).</p> <p style="padding-left: 40px;">2.1.2 Exceptions to 2.2.1 are permissible for languages with established orthographies and conventions that require the commingled use of multiple scripts. However, even with this exception, visually confusable characters from different scripts will not be allowed to co-exist in a single set of permissible code points unless a</p>	Updated to provide link to relevant Unicode reference.

Section	Topic	Change to Text	Rationale and Comments
		<p>corresponding policy and character table are clearly defined.</p>	
2.2.1.4.4	Review Procedure for Geographic Names	<p>A Geographic Names Panel (GNP) will determine whether each applied-for gTLD string represents a geographic name, and verify the relevance and authenticity of the supporting documentation where necessary.</p> <p>The GNP will review all applications received, not only those where the applicant has noted its applied-for gTLD string as a geographic name. For any application where the GNP determines that the applied-for gTLD string is a country or territory name (as defined in this module), the application will not pass the Geographic Names review and will be denied. No additional reviews will be available.</p> <p>For any application where the GNP determines that the applied-for gTLD string is not a geographic name requiring government support (as described in this module), the application will pass the Geographic Names review with no additional steps required.</p> <p>For any application where the GNP determines that the applied-for gTLD string is a geographic name requiring government support, the GNP will confirm that the applicant has provided the required documentation from the relevant governments or public authorities, and that the communication from the government or public authority is legitimate and contains the required content. ICANN may confirm the authenticity of the communication by consulting with the relevant diplomatic authorities or members of ICANN’s Governmental Advisory Committee</p>	<p>Added “calendar” days to provide clarity on calculation of days in this procedure.</p>

Section	Topic	Change to Text	Rationale and Comments
		<p>for the government or public authority concerned on the competent authority and appropriate point of contact within their administration for communications.</p> <p>The GNP may communicate with the signing entity of the letter to confirm their intent and their understanding of the terms on which the support for an application is given.</p> <p>In cases where an applicant has not provided the required documentation, the applicant will be contacted and notified of the requirement, and given a limited time frame to provide the documentation. If the applicant is able to provide the documentation before the close of the Initial Evaluation period, and the documentation is found to meet the requirements, the applicant will pass the Geographic Names review. If not, the applicant will have additional time to obtain the required documentation; however, if the applicant has not produced the required documentation by the required date (at least 90 <u>calendar</u> days from the date of notice), the application will be considered incomplete and will be ineligible for further review. The applicant may reapply in subsequent application rounds, if desired, subject to the fees and requirements of the specific application rounds.</p> <p>If there is more than one application for a string representing a certain geographic name as described in this section, and the applications have requisite government approvals, the applications will be suspended pending resolution by the applicants. If the applicants have not reached a resolution by either the date of the end of the application round (as announced by ICANN), or</p>	

Section	Topic	Change to Text	Rationale and Comments
		<p>the date on which ICANN opens a subsequent application round, whichever comes first, the applications will be rejected and applicable refunds will be available to applicants according to the conditions described in section 1.5.</p> <p>However, in the event that a contention set is composed of multiple applications with documentation of support from the same government or public authority, the applications will proceed through the contention resolution procedures described in Module 4 when requested by the government or public authority providing the documentation.</p> <p>If an application for a string representing a geographic name is in a contention set with applications for similar strings that have not been identified as geographical names, the string contention will be resolved using the string contention procedures described in Module 4.</p>	
2.2.3.2	Customary Services	<p>The following registry services are customary services offered by a registry operator:</p> <ul style="list-style-type: none"> <li>• Receipt of data from registrars concerning registration of domain names and name servers</li> <li>• Dissemination of TLD zone files</li> <li>• Dissemination of contact or other information concerning domain name registrations (<a href="#">e.g., port-43 WHOIS, Web-based Whois, RESTful Whois</a>)</li> <li>• DNS Security Extensions</li> </ul>	Added examples for additional detail on customary Whois services.

Section	Topic	Change to Text	Rationale and Comments
		<p>The applicant must describe whether any of these registry services are intended to be offered in a manner unique to the TLD.</p> <p>Any additional registry services that are unique to the proposed gTLD registry should be described in detail. Directions for describing the registry services are provided at <a href="http://www.icann.org/en/registries/rsep/rrs_sample.html">http://www.icann.org/en/registries/rsep/rrs_sample.html</a>.</p>	
2.3.1	Geographic Names Extended Evaluation	<p>In the case of an application that has been identified as a geographic name requiring government support, but where the applicant has not provided sufficient evidence of support or non-objection from all relevant governments or public authorities by the end of the Initial Evaluation period, the applicant has additional time in the Extended Evaluation period to obtain and submit this documentation.</p> <p>If the applicant submits the documentation to the Geographic Names Panel by the required date, the GNP will perform its review of the documentation as detailed in section 2.2.1.4. If the applicant has not provided the documentation by the required date (at least 90 <b>calendar</b> days from the date of the notice), the application will not pass the Extended Evaluation, and no further reviews are available.</p>	Added “calendar” days to provide clarity on calculation of days in this procedure.
2.3.3	Registry Services Extended	This section applies to Extended Evaluation of registry services, as described in subsection 2.2.3.	Added “calendar” days to provide clarity on calculation of days in this procedure.

Section	Topic	Change to Text	Rationale and Comments
	Evaluation	<p>If a proposed registry service has been referred to the Registry Services Technical Evaluation Panel (RSTEP) for an extended review, the RSTEP will form a review team of members with the appropriate qualifications.</p> <p>The review team will generally consist of three members, depending on the complexity of the registry service proposed. In a 3-member panel, the review could be conducted within 30 to 45 <u>calendar</u> days. In cases where a 5-member panel is needed, this will be identified before the extended evaluation starts. In a 5-member panel, the review could be conducted in 45 <u>calendar</u> days or fewer.</p> <p>The cost of an RSTEP review will be covered by the applicant through payment of the Registry Services Review Fee. Refer to payment procedures in section 1.5 of Module 1. The RSTEP review will not commence until payment has been received.</p> <p>If the RSTEP finds that one or more of the applicant’s proposed registry services may be introduced without risk of a meaningful adverse effect on security or stability, these services will be included in the applicant’s registry agreement with ICANN. If the RSTEP finds that the proposed service would create a risk of a meaningful adverse effect on security or stability, the applicant may elect to proceed with its application without the proposed service, or withdraw its application for the gTLD. In this instance, an applicant has 15 calendar days to notify ICANN of its intent to proceed with the application. If an applicant</p>	

Section	Topic	Change to Text	Rationale and Comments
		<p>does not explicitly provide such notice within this time frame, the application will proceed no further.</p>	
2.4.2	Panel Selection Process	<p>ICANN <del>hasis in the process of</del> select<del>ing</del> qualified third-party providers to perform the various reviews, <u>based on an extensive selection process.</u><sup>6,7</sup> In addition to the specific subject matter expertise required for each panel, specified qualifications are required, including:</p> <ul style="list-style-type: none"> <li>• The provider must be able to convene – or have the capacity to convene - globally diverse panels and be able to evaluate applications from all regions of the world, including applications for IDN gTLDs.</li> <li>• The provider should be familiar with the IETF IDNA standards, Unicode standards, relevant RFCs and the terminology associated with IDNs.</li> <li>• The provider must be able to scale quickly to meet the demands of the evaluation of an unknown number of applications. At present it is not known how many applications will be received, how complex they will be, and whether they will be predominantly for ASCII or non-ASCII gTLDs.</li> <li>• The provider must be able to evaluate the applications within the required timeframes of Initial and Extended Evaluation.</li> </ul> <p><del>The providers will be formally engaged and announced on</del></p>	<p>Updated to reflect selection of evaluation panels as announced at <a href="http://newgtlds.icann.org/preparing-evaluators-22nov11-en">http://newgtlds.icann.org/preparing-evaluators-22nov11-en</a>.</p>

<sup>6</sup> ~~See <http://icann.org/en/topics/new-gtlds/open-tenders-eei-en.htm>.~~

<sup>7</sup> <http://newgtlds.icann.org/about/evaluation-panels-selection-process>

Section	Topic	Change to Text	Rationale and Comments																		
		<del>ICANN's website prior to the opening of the Application Submission period.</del>																			
<i>Annex to Module 2: Separable Country Names List</i>																					
Entry for LY		<del>Libya</del>	Updated in accordance with ISO 3166-1 Newsletter VI-11 <a href="http://www.iso.org/iso/nl_vi-11_name_change_for_libya.pdf">http://www.iso.org/iso/nl_vi-11_name_change_for_libya.pdf</a> As LIBYA is now the English short name for this entry, this string does not require additional protection on the Separable Country Names List.																		
<i>Attachment to Module 2: Evaluation Questions and Criteria</i>																					
6	Primary Contact	<table border="1"> <thead> <tr> <th>Fields</th> <th>Included in public posting</th> </tr> </thead> <tbody> <tr> <td>Name</td> <td>Y</td> </tr> <tr> <td>Title</td> <td>Y</td> </tr> <tr> <td><u>Date of birth</u></td> <td><u>N</u></td> </tr> <tr> <td><u>City of birth</u></td> <td><u>N</u></td> </tr> <tr> <td>Address</td> <td><u>N</u><del>Y</del></td> </tr> <tr> <td>Phone number</td> <td>Y</td> </tr> <tr> <td>Fax number</td> <td>Y</td> </tr> <tr> <td>Email address</td> <td>Y</td> </tr> </tbody> </table>	Fields	Included in public posting	Name	Y	Title	Y	<u>Date of birth</u>	<u>N</u>	<u>City of birth</u>	<u>N</u>	Address	<u>N</u> <del>Y</del>	Phone number	Y	Fax number	Y	Email address	Y	Updated for consistency with fields provided for individuals named in question 11.
Fields	Included in public posting																				
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6 Notes	Primary Contact	<del>The primary contact is the individual designated with the primary responsibility for management of the application, including responding to tasks in the TLD Application System (TAS) during the various application phases, will receive all communications regarding the application. Either the primary or the secondary contact may respond. In the event of a conflict, the communication received from the primary contact will be taken as authoritative.</del> Both contacts listed should also be prepared to receive inquiries from the public.	Updated to provide clarification in response to questions concerning the role of the primary contact.																		

Section	Topic	Change to Text	Rationale and Comments																		
7	Secondary Contact	<table border="1" data-bbox="558 315 1131 639"> <thead> <tr> <th data-bbox="558 315 772 350">Fields</th> <th data-bbox="772 315 1131 350">Included in public posting</th> </tr> </thead> <tbody> <tr> <td data-bbox="558 350 772 386">Name</td> <td data-bbox="772 350 1131 386">Y</td> </tr> <tr> <td data-bbox="558 386 772 422">Title</td> <td data-bbox="772 386 1131 422">Y</td> </tr> <tr> <td data-bbox="558 422 772 457"><u>Date of birth</u></td> <td data-bbox="772 422 1131 457"><u>N</u></td> </tr> <tr> <td data-bbox="558 457 772 493"><u>City of birth</u></td> <td data-bbox="772 457 1131 493"><u>N</u></td> </tr> <tr> <td data-bbox="558 493 772 529">Address</td> <td data-bbox="772 493 1131 529"><del>Y</del>N</td> </tr> <tr> <td data-bbox="558 529 772 565">Phone number</td> <td data-bbox="772 529 1131 565">Y</td> </tr> <tr> <td data-bbox="558 565 772 600">Fax number</td> <td data-bbox="772 565 1131 600">Y</td> </tr> <tr> <td data-bbox="558 600 772 636">Email address</td> <td data-bbox="772 600 1131 636">Y</td> </tr> </tbody> </table>	Fields	Included in public posting	Name	Y	Title	Y	<u>Date of birth</u>	<u>N</u>	<u>City of birth</u>	<u>N</u>	Address	<del>Y</del> N	Phone number	Y	Fax number	Y	Email address	Y	Updated for consistency with fields provided for individuals named in question 11.
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7 Notes	Secondary Contact	The secondary contact <u>is listed in the event the primary contact is unavailable to continue with the application process. will be copied on all communications regarding the application. Either the primary or the secondary contact may respond.</u>	Updated to provide clarification in response to questions concerning the role of the secondary contact.																		
8(c) Notes	Proof of Legal Establishment	Applications without valid proof of legal establishment will not be evaluated further.  <u>Supporting documentation for proof of legal establishment should be submitted in the original language.</u>	Updated to provide clarification on supporting documentation.																		
11(a)	Applicant Background	Enter the full name, <u>date and country of birth</u> , contact information (permanent residence), and position of all directors (i.e., members of the applicant’s Board of Directors, if applicable).	The requirements for submission of information concerning individuals named in the application are updated based on discussions with candidate background screening service providers. This will assist providers in tying information to the relevant individuals and helping to eliminate false positives.																		
11(b)	Applicant Background	Enter the full name, <u>date and country of birth</u> , contact information (permanent residence), and position of all	The requirements for submission of information concerning individuals named in the application are updated based on																		

Section	Topic	Change to Text	Rationale and Comments
		officers and partners. Officers are high-level management officials of a corporation or business, for example, a CEO, vice president, secretary, chief financial officer. Partners would be listed in the context of a partnership or other such form of legal entity.	discussions with candidate background screening service providers. This will assist providers in tying information to the relevant individuals and helping to eliminate false positives.
11(c)	Applicant Background	(c) Enter the full name, <u>and</u> contact information <del>(permanent residence of individual or principal place of business of entity) and position</del> of all shareholders holding at least 15% of shares, and percentage held by each. <u>For a shareholder entity, enter the principal place of business. For a shareholder individual, enter the date and country of birth and contact information (permanent residence).</u>	The requirements for submission of information concerning individuals named in the application are updated based on discussions with candidate background screening service providers. This will assist providers in tying information to the relevant individuals and helping to eliminate false positives.
11(d)	Applicant Background	(d) For an applying entity that does not have directors, officers, partners, or shareholders, enter the full name, <u>date and country of birth</u> , contact information (permanent residence <del>of individual or principal place of business of entity</del> ), and position of all individuals having overall legal or executive responsibility for the applying entity.	The requirements for submission of information concerning individuals named in the application are updated based on discussions with candidate background screening service providers. This will assist providers in tying information to the relevant individuals and helping to eliminate false positives.
15(a) Notes	IDN Tables	In the case of an application for an IDN gTLD, IDN tables must be submitted for the language or script for the applied-for gTLD string. IDN tables must also be submitted for each language or script in which the applicant intends to offer IDN registrations at the second level <u>(see question 44)</u> .  <u>IDN tables should be submitted in a machine-readable format. The model format described in Section 5 of RFC 4290 would be ideal. The format used by RFC 3743 is an</u>	Updated to provide additional detail on suggested formats for submission of IDN tables.

Section	Topic	Change to Text	Rationale and Comments
		<p><u>acceptable alternative. Variant generation algorithms that are more complex (such as those with contextual rules) and cannot be expressed using these table formats should be specified in a manner that could be re-implemented programmatically by ICANN. Ideally, for any complex table formats, a reference code implementation should be provided in conjunction with a description of the generation rules.</u></p>	
20(f) Notes	Community-based Designation	<p>At least one such endorsement is required for a complete application. The form and content of the endorsement are at the discretion of the party providing the endorsement; however, the letter must identify the applied-for gTLD string and the applying entity, include an express statement support for the application, and the supply the contact information of the entity providing the endorsement.</p> <p>Endorsements from institutions not mentioned in the response to 20(b) should be accompanied by a clear description of each such institution's relationship to the community.</p> <p><u>Endorsements presented as supporting documentation for this question should be submitted in the original language.</u></p>	Updated to provide clarification on supporting documentation.
21(b) Notes	Geographic Names	<p>See the documentation requirements in Module 2 of the Applicant Guidebook.</p> <p><u>Documentation presented in response to this question should be submitted in the original language.</u></p>	Updated to provide clarification on supporting documentation.

Section	Topic	Change to Text	Rationale and Comments
22 Notes	Protection of Geographic Names	<p>Applicants should consider and describe how they will incorporate Governmental Advisory Committee (GAC) advice in their management of second-level domain name registrations. See “Principles regarding New gTLDs” at <a href="https://gacweb.icann.org/display/gacweb/New+gTLDs">https://gacweb.icann.org/display/gacweb/New+gTLDs</a>.</p> <p>For reference, applicants may draw on existing methodology developed for the reservation and release of country names in the .INFO top-level domain. See <a href="https://gacweb.icann.org/display/gacweb/New+gTLDs">https://gacweb.icann.org/display/gacweb/New+gTLDs</a>.</p> <p>Proposed measures will be posted for public comment as part of the application. However, note that procedures for release of geographic names at the second level must be separately approved according to Specification 5 of the Registry Agreement. <u>That is, approval of a gTLD application does not constitute approval for release of any geographic names under the Registry Agreement. Such approval must be granted separately by ICANN.</u></p>	Clarification in response to questions received.
23	Registry Services	<p>Provide name and full description of all the Registry Services to be provided. Descriptions should include both technical and business components of each proposed service, and address any potential security or stability concerns.</p> <p>The following registry services are customary services offered by a registry operator:</p> <ul style="list-style-type: none"> <li>A. Receipt of data from registrars concerning registration of domain names and name servers.</li> </ul>	Added examples for additional detail on customary Whois services.

Section	Topic	Change to Text	Rationale and Comments
		<p>B. Dissemination of TLD zone files.</p> <p>C. Dissemination of contact or other information concerning domain name registrations (<a href="#">e.g., port-43 WHOIS, Web-based Whois, RESTful</a> Whois service).</p> <p>D. Internationalized Domain Names, where offered.</p> <p>E. DNS Security Extensions (DNSSEC).</p> <p>The applicant must describe whether any of these registry services are intended to be offered in a manner unique to the TLD.</p> <p>Additional proposed registry services that are unique to the registry must also be described.</p>	
30(a)	Security Policy	<p><b>2 - exceeds requirements:</b> Response meets all attributes for a score of 1 and includes:</p> <p>(1) Evidence of highly developed and detailed security capabilities, with various baseline security levels, independent benchmarking of security metrics, robust periodic security monitoring, and continuous enforcement; and</p> <p>(2) an independent assessment report is provided demonstrating effective security controls are either in place or have been designed, and are commensurate with the applied-for gTLD string. (This could be ISO 27001 certification or other well-established and recognized industry certifications for the registry operation. If new independent standards for demonstration of effective security controls are</p>	Added an example of a set of independent standards based on recent correspondence from the Security Standards Working Group.

Section	Topic	Change to Text	Rationale and Comments
		<p>established, such as the High Security Top Level Domain (HSTLD) designation, this could also be included.} <u>An illustrative example of an independent standard is the proposed set of requirements described in <a href="http://www.icann.org/en/correspondence/aba-bits-to-beckstrom-crocker-20dec11-en.pdf">http://www.icann.org/en/correspondence/aba-bits-to-beckstrom-crocker-20dec11-en.pdf</a>.</u></p>	
35	DNS Service	<p>DNS Service: describe the configuration and operation of nameservers, including how the applicant will comply with relevant RFCs.</p> <p>All name servers used for the new gTLD must be operated in compliance with the DNS protocol specifications defined in the relevant RFCs, including but not limited to: 1034, 1035, 1982, 2181, 2182, 2671, 3226, 3596, 3597, 3901, 4343, and 4472.</p> <ul style="list-style-type: none"> <li>• Provide details of the intended DNS Service including, but not limited to: A description of the DNS services to be provided, such as query rates to be supported at initial operation, and reserve capacity of the system. <del>How will these be scaled as a function of growth in the TLD? Similarly, describe how services will scale for name server update method and performance. Describe how your nameserver update methods will change at various scales. Describe how DNS performance will change at various scales.</del></li> <li>• RFCs that will be followed – describe how services are compliant with RFCs and if these are</li> </ul>	Clarification in response to questions received.

Section	Topic	Change to Text	Rationale and Comments
		<p>dedicated or shared with any other functions (capacity/performance) or DNS zones.</p> <ul style="list-style-type: none"> <li>• The resources used to implement the services - describe complete server hardware and software, including network bandwidth and addressing plans for servers. Also include resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> <li>• Demonstrate how the system will function - describe how the proposed infrastructure will be able to deliver the performance described in Specification 10 (section 2) attached to the Registry Agreement.</li> </ul> <p>Examples of evidence include:</p> <ul style="list-style-type: none"> <li>• Server configuration standard (i.e., planned configuration).</li> <li>• Network addressing and bandwidth for query load and update propagation.</li> <li>• Headroom to meet surges.</li> </ul> <p>A complete answer is expected to be no more than 10 pages.</p>	
44 Notes	IDNs	IDNs are an optional service at time of launch. Absence of IDN implementation or plans will not detract from an applicant's score. Applicants who respond to this question with plans for implementation of IDNs at time of launch will	Updated to provide additional detail on suggested formats for submission of IDN tables.

Section	Topic	Change to Text	Rationale and Comments
		<p>be scored according to the criteria indicated here.</p> <p><u>IDN tables should be submitted in a machine-readable format. The model format described in Section 5 of RFC 4290 would be ideal. The format used by RFC 3743 is an acceptable alternative. Variant generation algorithms that are more complex (such as those with contextual rules) and cannot be expressed using these table formats should be specified in a manner that could be re-implemented programmatically by ICANN. Ideally, for any complex table formats, a reference code implementation should be provided in conjunction with a description of the generation rules.</u></p>	
45 Notes	Financial Statements	<p>The questions in this section (45-50) are intended to give applicants an opportunity to demonstrate their financial capabilities to run a registry.</p> <p><u>Supporting documentation for this question should be submitted in the original language.</u></p>	Updated to provide clarification on supporting documentation.
45 Scoring	Financial Statements	<p><b>1 - meets requirements:</b> Complete audited or independently certified financial statements are provided, at the highest level available in the applicant’s jurisdiction. Where such audited or independently certified financial statements are not available, such as for newly-formed entities, the applicant has provided an explanation and has provided, at a minimum, unaudited financial statements.</p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1. <del>For example, entity with an operating history fails to provide audited or independently certified statements.</del></p>	Removed example, which was inconsistent with other requirements stated in this question.

Section	Topic	Change to Text	Rationale and Comments
48(a) Notes	Funding & Revenue	<u>Supporting documentation for this question should be submitted in the original language.</u>	Updated to provide clarification on supporting documentation.
50(a) Notes	Continued Operations Instrument	<p>Registrant protection is critical and thus new gTLD applicants are requested to provide evidence indicating that the critical functions will continue to be performed even if the registry fails. Registrant needs are best protected by a clear demonstration that the basic registry functions are sustained for an extended period even in the face of registry failure. Therefore, this section is weighted heavily as a clear, objective measure to protect and serve registrants.</p> <p>The applicant has two tasks associated with adequately making this demonstration of continuity for critical registry functions. First, costs for maintaining critical registrant protection functions are to be estimated (Part a). In evaluating the application, the evaluators will adjudge whether the estimate is reasonable given the systems architecture and overall business approach described elsewhere in the application.</p> <p>The Continuing Operations Instrument (COI) is invoked by ICANN if necessary to pay for an Emergency Back End Registry Operator (EBERO) to maintain the five critical registry functions for a period of three to five years. Thus, the cost estimates are tied to the cost for a third party to provide the functions, not to the applicant's actual in-house or subcontracting costs for provision of these functions.</p> <p><u>Note that ICANN is building a model for these costs in</u></p>	Updated to provide reference to cost guidelines, as at <a href="http://www.icann.org/en/announcements/announcement-3-23dec11-en.htm">http://www.icann.org/en/announcements/announcement-3-23dec11-en.htm</a> .

Section	Topic	Change to Text	Rationale and Comments
		<p><del>conjunction with potential EBERO service providers. Thus, guidelines for determining the appropriate amount for the COI will be available to the applicant. Refer to guidelines at <a href="http://www.icann.org/en/announcements/announcement-3-23dec11-en.htm">http://www.icann.org/en/announcements/announcement-3-23dec11-en.htm</a> regarding estimation of costs.</del> However, the applicant <del>must will still be required to</del> provide its own estimates and explanation in response to this question.</p>	
50(b)	Continued Operations Instrument	<p>Applicants must provide evidence as to how the funds required for performing these critical registry functions will be available and guaranteed to fund registry operations (for the protection of registrants in the new gTLD) for a minimum of three years following the termination of the Registry Agreement. ICANN has identified two methods to fulfill this requirement:</p> <p><u>(i) Irrevocable standby letter of credit (LOC) issued by a reputable financial institution.</u></p> <ul style="list-style-type: none"> <li>• The amount of the LOC must be equal to or greater than the amount required to fund the registry operations specified above for at least three years. In the event of a draw upon the letter of credit, the actual payout would be tied to the cost of running those functions.</li> <li>• The LOC must name ICANN or its designee as the beneficiary. Any funds paid out would be provided to the designee who is operating the required registry functions.</li> <li>• The LOC must have a term of at least five years from the delegation of the TLD. The LOC may be structured with an annual expiration date if</li> </ul>	<p>Updated in accordance with guidelines provided to applicants at <a href="http://www.icann.org/en/announcements/announcement-3-23dec11-en.htm">http://www.icann.org/en/announcements/announcement-3-23dec11-en.htm</a>.</p>

Section	Topic	Change to Text	Rationale and Comments
		<p>it contains an evergreen provision providing for annual extensions, without amendment, for an indefinite number of periods until the issuing bank informs the beneficiary of its final expiration or until the beneficiary releases the LOC as evidenced in writing. If the expiration date occurs prior to the fifth anniversary of the delegation of the TLD, applicant will be required to obtain a replacement instrument.</p> <ul style="list-style-type: none"> <li data-bbox="640 600 1260 990">• The LOC must be issued by a reputable financial institution insured at the highest level in its jurisdiction. <del>This may include a bank or insurance company with a strong international reputation that has a strong credit rating issued by a third party rating agency such as Standard &amp; Poor's (AA or above), Moody's (Aa or above), or A.M. Best (A X or above).</del> Documentation should indicate by whom the issuing institution is insured <u>(i.e., as opposed to by whom the institution is rated)</u>.</li> <li data-bbox="640 998 1260 1136">• The LOC will provide that ICANN or its designee shall be unconditionally entitled to a release of funds (full or partial) thereunder upon delivery of written notice by ICANN or its designee.</li> <li data-bbox="640 1144 1260 1380">• Applicant should attach an original copy of the executed letter of credit or a draft of the letter of credit containing the full terms and conditions. If not yet executed, the Applicant will be required to provide ICANN with an original copy of the executed LOC prior to or concurrent with the execution of the Registry</li> </ul>	

Section	Topic	Change to Text	Rationale and Comments
		<p>Agreement.</p> <ul style="list-style-type: none"> <li>• The LOC must contain at least the following required elements:               <ul style="list-style-type: none"> <li>○ Issuing bank and date of issue.</li> <li>○ Beneficiary: ICANN / 4676 Admiralty Way, Suite 330 / Marina del Rey, CA 90292 / US, or its designee.</li> <li>○ Applicant’s complete name and address.</li> <li>○ LOC identifying number.</li> <li>○ Exact amount in USD.</li> <li>○ Expiry date.</li> <li>○ Address, procedure, and required forms whereby presentation for payment is to be made.</li> <li>○ Conditions:                   <ul style="list-style-type: none"> <li>▪ Partial drawings from the letter of credit may be made provided that such payment shall reduce the amount under the standby letter of credit.</li> <li>▪ All payments must be marked with the issuing bank name and the bank’s standby letter of credit number.</li> <li>▪ LOC may not be modified, amended, or amplified by reference to any other document, agreement, or instrument.</li> <li>▪ The LOC is subject to the</li> </ul> </li> </ul> </li> </ul>	

Section	Topic	Change to Text	Rationale and Comments
		<p data-bbox="884 284 1262 526">International Standby Practices (ISP 98) International Chamber of Commerce (Publication No. 590), or to an alternative standard that has been demonstrated to be reasonably equivalent.</p> <p data-bbox="552 570 1243 631">(ii) A <u>deposit into an irrevocable cash escrow account</u> held by a reputable financial institution.</p> <ul data-bbox="646 643 1262 1386" style="list-style-type: none"> <li data-bbox="646 643 1262 740">• The amount of the deposit must be equal to or greater than the amount required to fund registry operations for at least three years.</li> <li data-bbox="646 751 1262 954">• Cash is to be held by a third party financial institution which will not allow the funds to be commingled with the Applicant’s operating funds or other funds and may only be accessed by ICANN or its designee if certain conditions are met.</li> <li data-bbox="646 966 1262 1352">• The account must be held by a reputable financial institution insured at the highest level in its jurisdiction. <del>This may include a bank or insurance company with a strong international reputation that has a strong credit rating issued by a third party rating agency such as Standard &amp; Poor’s (AA or above), Moody’s (Aa or above), or A.M. Best (A-X or above).</del> Documentation should indicate by whom the issuing institution is insured <u>(i.e., as opposed to by whom the institution is rated)</u>.</li> <li data-bbox="646 1364 1262 1386">• The escrow agreement relating to the escrow</li> </ul>	

Section	Topic	Change to Text	Rationale and Comments
		<p>account will provide that ICANN or its designee shall be unconditionally entitled to a release of funds (full or partial) thereunder upon delivery of written notice by ICANN or its designee.</p> <ul style="list-style-type: none"> <li>• The escrow agreement must have a term of five years from the delegation of the TLD.</li> <li>• The funds in the deposit escrow account are not considered to be an asset of ICANN.</li> <li>• Any interest earnings less bank fees are to accrue to the deposit, and will be paid back to the applicant upon liquidation of the account to the extent not used to pay the costs and expenses of maintaining the escrow.</li> <li>• The deposit plus accrued interest, less any bank fees in respect of the escrow, is to be returned to the applicant if the funds are not used to fund registry functions due to a triggering event or after five years, whichever is greater.</li> <li>• The Applicant will be required to provide ICANN an explanation as to the amount of the deposit, the institution that will hold the deposit, and the escrow agreement for the account at the time of submitting an application.</li> <li>• Applicant should attach evidence of deposited funds in the escrow account, or evidence of provisional arrangement for deposit of funds. Evidence of deposited funds and terms of escrow agreement must be provided to ICANN prior to or concurrent with the execution of the</li> </ul>	

Section	Topic	Change to Text	Rationale and Comments
		Registry Agreement.	
50(b) Notes	Continued Operations Instrument	<p>Second (Part b), methods of securing the funds required to perform those functions for at least three years are to be described by the applicant in accordance with the criteria below. Two types of instruments will fulfill this requirement. The applicant must identify which of the two methods is being described. The instrument is required to be in place at the time of the execution of the Registry Agreement.</p> <p><u>Financial Institution Ratings: The instrument must be issued or held by a financial institution with a rating beginning with "A" (or the equivalent) by any of the following rating agencies: A.M. Best, Dominion Bond Rating Service, Egan-Jones, Fitch Ratings, Kroll Bond Rating Agency, Moody's, Morningstar, Standard &amp; Poor's, and Japan Credit Rating Agency.</u></p> <p><u>If an applicant cannot access a financial institution with a rating beginning with "A," but a branch or subsidiary of such an institution exists in the jurisdiction of the applying entity, then the instrument may be issued by the branch or subsidiary or by a local financial institution with an equivalent or higher rating to the branch or subsidiary.</u></p> <p><u>If an applicant cannot access any such financial institutions, the instrument may be issued by the highest-rated financial institution in the national jurisdiction of the applying entity, if accepted by ICANN.</u></p>	<p>Updated in accordance with guidelines provided to applicants at <a href="http://www.icann.org/en/announcements/announcement-3-23dec11-en.htm">http://www.icann.org/en/announcements/announcement-3-23dec11-en.htm</a>. Contains additional clarifications based on questions received concerning the guidelines.</p>

Section	Topic	Change to Text	Rationale and Comments
		<p><u>Execution by ICANN: For any financial instruments that contemplate ICANN being a party, upon the written request of the applicant, ICANN may (but is not obligated to) execute such agreement prior to submission of the applicant's application if the agreement is on terms acceptable to ICANN. ICANN encourages applicants to deliver a written copy of any such agreement (only if it requires ICANN's signature) to ICANN as soon as possible to facilitate ICANN's review. If the financial instrument requires ICANN's signature, then the applicant will receive 3 points for question 50 (for the instrument being "secured and in place") only if ICANN executes the agreement prior to submission of the application. ICANN will determine, in its sole discretion, whether to execute and become a party to a financial instrument.</u></p> <p><u>The financial instrument should be submitted in the original language.</u></p>	
	<p>Projections Template Instructions</p>	<p><b>Section IIb – Breakout of Critical Registry Function Operating Cash Outflows</b></p> <p><del>Lines A – E.</del> Provide the projected cash outflows for the five critical registry functions. If these functions are outsourced, the component of the outsourcing fee representing these functions must be separately identified and provided. <del>The projected cash outflow for these functions will form the basis of the 3-year reserve required in Question 50 of the application. These costs are based on the applicant's cost to manage these functions and should be calculated separately from the Continued Operations Instrument (COI) for Question 50.</del></p>	<p>Previously, these sections were used for calculation of the Continued Operations Instrument. Given the guidelines provided, this is no longer required.</p>

Section	Topic	Change to Text	Rationale and Comments
	Projections Template Instructions	<del>Line H – Equals the cash outflows for the critical registry functions projected over 3 years (Columns H, I, and J)</del>	This referenced the totals from the removed section.
	Projections Template Sample		Numbering adjustments made to correct calculations throughout.
<i>Module 3</i>			
3.1	GAC Advice on New gTLDs	<p><del>The GAC has expressed the intention to develop a standard vocabulary and set of rules for use in providing its advice in this program. These will be published and, as a result, this section might be updated to reflect the terms established by the GAC.</del></p> <p>ICANN’s Governmental Advisory Committee was formed to consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN’s policies and various laws and international agreements or where they may affect public policy issues.</p> <p>The process for GAC Advice on New gTLDs is intended to address applications that are identified by governments to be problematic, e.g., that potentially violate national law or raise sensitivities.</p> <p>GAC members can raise concerns about any application to the GAC. The GAC as a whole will consider concerns raised by GAC members, and agree on GAC advice to forward to the ICANN Board of Directors.</p> <p>The GAC can provide advice on any application. For the</p>	<p>Updated for consistency with the formulation of GAC advice, as detailed at <a href="https://gacweb.icann.org/download/attachments/4816912/Communique+Dakar+-+27+October+2011.pdf?version=1&amp;modificationDate=1319796551000">https://gacweb.icann.org/download/attachments/4816912/Communique+Dakar+-+27+October+2011.pdf?version=1&amp;modificationDate=1319796551000</a>.</p>

Section	Topic	Change to Text	Rationale and Comments
		<p>Board to be able to consider the GAC advice during the evaluation process, the GAC advice would have to be submitted by the close of the Objection Filing Period (see Module 1).</p> <p>GAC Advice may take <u>one of the following forms</u><del>several forms, among them:</del></p> <p>I. The GAC advises ICANN that it is the consensus<sup>8</sup> of the GAC that a particular application should not proceed. This will create a strong presumption for <u>the ICANN Board</u> that the application should not be approved. <del>In the event that the ICANN Board determines to approve an application despite the consensus advice of the GAC, pursuant to the ICANN Bylaws, the GAC and the ICANN Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution. In the event the Board determines not to accept the GAC Advice, the Board will provide a rationale for its decision. The ICANN Board is also expected to provide a rationale for its decision if it does not follow the GAC Advice.</del></p> <p>II. <u>The GAC advises ICANN that there are concerns</u><del>provides advice that indicates that some governments are concerned</del> about a particular application <u>“dot-example.”</u> <u>The ICANN Board is expected to enter into dialogue with the GAC to understand the scope of concerns. The ICANN Board is also expected to provide a rationale for</u></p>	

<sup>8</sup> -The GAC will clarify the basis on which consensus advice is developed.

Section	Topic	Change to Text	Rationale and Comments
		<p><del>its decision. Such advice will be passed on to the applicant but will not create the presumption that the application should be denied, and such advice would not require the Board to undertake the process for attempting to find a mutually acceptable solution with the GAC should the application be approved. Note that in any case, that the Board will take seriously any other advice that GAC might provide and will consider entering into dialogue with the GAC to understand the scope of the concerns expressed.</del></p> <p>III. The GAC advises ICANN that an application should not proceed unless remediated. This will raise a strong presumption for the Board that the application should not proceed <u>unless</u>. <del>If there is a remediation method available in the Guidebook (such as securing <u>the approval of one or more</u> governments <del>approval</del>), that <u>is implemented by the applicant</u> <del>action may be taken. If the issue identified by the GAC is not remediated, the ICANN Board is also expected to provide a rationale for its decision if the Board does not follow GAC advice</del> <del>However, material amendments to applications are generally prohibited and if there is no remediation method available, the application will not go forward and the applicant can re-apply in the second round.</del></del></p> <p>Where GAC Advice on New gTLDs is received by the Board concerning an application, ICANN will publish the Advice and endeavor to notify the relevant applicant(s) promptly. The applicant will have a period of 21 calendar days from the publication date in which to submit a response to the</p>	

Section	Topic	Change to Text	Rationale and Comments
		<p>ICANN Board.</p> <p>ICANN will consider the GAC Advice on New gTLDs as soon as practicable. The Board may consult with independent experts, such as those designated to hear objections in the New gTLD Dispute Resolution Procedure, in cases where the issues raised in the GAC advice are pertinent to one of the subject matter areas of the objection procedures. The receipt of GAC advice will not toll the processing of any application (i.e., an application will not be suspended but will continue through the stages of the application process).</p>	
3.2.3	Dispute Resolution Service Providers	<p>To trigger a dispute resolution proceeding, an objection must be filed by the posted deadline date, directly with the appropriate DRSP for each objection ground.</p> <ul style="list-style-type: none"> <li>• The International Centre for Dispute Resolution has agreed <del>in principle</del> to administer disputes brought pursuant to string confusion objections.</li> <li>• The Arbitration and Mediation Center of the World Intellectual Property Organization has agreed <del>in principle</del> to administer disputes brought pursuant to legal rights objections.</li> <li>• The International Center of Expertise of the International Chamber of Commerce has agreed <del>in principle</del> to administer disputes brought pursuant to Limited Public Interest and Community Objections.</li> </ul> <p>ICANN selected DRSPs on the basis of their relevant</p>	Updated to remove conditional language.

Section	Topic	Change to Text	Rationale and Comments
		<p>experience and expertise, as well as their willingness and ability to administer dispute proceedings in the new gTLD Program. The selection process began with a public call for expressions of interest<sup>9</sup> followed by dialogue with those candidates who responded. The call for expressions of interest specified several criteria for providers, including established services, subject matter expertise, global capacity, and operational capabilities. An important aspect of the selection process was the ability to recruit panelists who will engender the respect of the parties to the dispute.</p>	
3.3	Filing Procedures	<p>The information included in this section provides a summary of procedures for filing:</p> <ul style="list-style-type: none"> <li>• Objections; and</li> <li>• Responses to objections.</li> </ul> <p>For a comprehensive statement of filing requirements applicable generally, refer to the New gTLD Dispute Resolution Procedure (“Procedure”) included as an attachment to this module. In the event of any discrepancy between the information presented in this module and the Procedure, the Procedure shall prevail.</p> <p>Note that the rules and procedures of each DRSP specific to each objection ground must also be followed.</p> <ul style="list-style-type: none"> <li>• For a String Confusion Objection, the applicable</li> </ul>	<p>Updated to indicate that WIPO Rules for New gTLD Dispute Resolution have been issued and are no longer in draft form. See <a href="http://www.icann.org/en/topics/new-gtlds/wipo-rules-clean-19sep11-en.pdf">http://www.icann.org/en/topics/new-gtlds/wipo-rules-clean-19sep11-en.pdf</a>.</p>

<sup>9</sup> See <http://www.icann.org/en/announcements/announcement-21dec07.htm>.

Section	Topic	Change to Text	Rationale and Comments
		<p>DRSP Rules are the ICDR Supplementary Procedures for ICANN’s New gTLD Program. These rules are available in draft form and have been posted along with this module.</p> <ul style="list-style-type: none"> <li>• For a Legal Rights Objection, the applicable DRSP Rules are the WIPO Rules for New gTLD Dispute Resolution. These rules are available <del>in draft form</del> and have been posted along with this module.</li> <li>• For a Limited Public Interest Objection, the applicable DRSP Rules are the Rules for Expertise of the International Chamber of Commerce (ICC), as supplemented by the ICC as needed.</li> <li>• For a Community Objection, the applicable DRSP Rules are the Rules for Expertise of the International Chamber of Commerce (ICC), as supplemented by the ICC as needed.</li> </ul>	
3.4.7	Dispute Resolution Costs	<p>Before acceptance of objections, each DRSP will publish a schedule of costs or statement of how costs will be calculated for the proceedings that it administers under this procedure. These costs cover the fees and expenses of the members of the panel and the DRSP’s administrative costs.</p> <p>ICANN expects that string confusion and legal rights objection proceedings will involve a fixed amount charged by the panelists while Limited Public Interest and community objection proceedings will involve hourly rates charged by the panelists.</p>	Updated to indicate “calendar” days for consistency with New gTLD Dispute Resolution Procedure.

Section	Topic	Change to Text	Rationale and Comments
		<p>Within ten (10) <del>calendar</del><b>business</b> days of constituting the panel, the DRSP will estimate the total costs and request advance payment in full of its costs from both the objector and the applicant. Each party must make its advance payment within ten (10) <b>calendar</b> days of receiving the DRSP's request for payment and submit to the DRSP evidence of such payment. The respective filing fees paid by the parties will be credited against the amounts due for this advance payment of costs.</p> <p>The DRSP may revise its estimate of the total costs and request additional advance payments from the parties during the resolution proceedings.</p> <p>Additional fees may be required in specific circumstances; for example, if the DRSP receives supplemental submissions or elects to hold a hearing.</p> <p>If an objector fails to pay these costs in advance, the DRSP will dismiss its objection and no fees paid by the objector will be refunded.</p> <p>If an applicant fails to pay these costs in advance, the DSRP will sustain the objection and no fees paid by the applicant will be refunded.</p> <p>After the hearing has taken place and the panel renders its expert determination, the DRSP will refund the advance payment of costs to the prevailing party.</p>	
<i>Provider Fees and Rules</i>			

Section	Topic	Change to Text	Rationale and Comments
			Included updated Supplementary Procedures for String Confusion Objections (Rules) provided by the International Centre for Dispute Resolution (ICDR).
<i>Module 4</i>			
4.4	Contention Resolution and Contract Execution	<p>An applicant that has been declared the winner of a contention resolution process will proceed by entering into the contract execution step. (Refer to section 5.1 of Module 5.)</p> <p>If a winner of the contention resolution procedure has not executed a contract within 90 <b>calendar</b> days of the decision, ICANN has the right to deny that application and extend an offer to the runner-up applicant, if any, to proceed with its application. For example, in an auction, another applicant who would be considered the runner-up applicant might proceed toward delegation. This offer is at ICANN's option only. The runner-up applicant in a contention resolution process has no automatic right to an applied-for gTLD string if the first place winner does not execute a contract within a specified time. If the winning applicant can demonstrate that it is working diligently and in good faith toward successful completion of the steps necessary for entry into the registry agreement, ICANN may extend the 90-day period at its discretion. Runner-up applicants have no claim of priority over the winning application, even after what might be an extended period of negotiation.</p>	Added "calendar" days to provide clarity on calculation of days in this procedure.
<i>Attachment to Module 5: gTLD Registry Agreement</i>			
2.10	Pricing for Registry Services	(a) With respect to initial domain name registrations, Registry Operator shall provide <b>ICANN and</b> each ICANN	The intent of this requirement for notification of price changes is to provide transparency around registry pricing.

Section	Topic	Change to Text	Rationale and Comments
		<p>accredited registrar that has executed the registry-registrar agreement for the TLD advance written notice of any price increase (including as a result of the elimination of any refunds, rebates, discounts, product tying or other programs which had the effect of reducing the price charged to registrars, unless such refunds, rebates, discounts, product tying or other programs are of a limited duration that is clearly and conspicuously disclosed to the registrar when offered) of no less than thirty (30) calendar days. Registry Operator shall offer registrars the option to obtain initial domain name registrations for periods of one to ten years at the discretion of the registrar, but no greater than ten years.</p> <p>(b) With respect to renewal of domain name registrations, Registry Operator shall provide <u>ICANN and</u> each ICANN accredited registrar that has executed the registry-registrar agreement for the TLD advance written notice of any price increase (including as a result of the elimination of any refunds, rebates, discounts, product tying, Qualified Marketing Programs or other programs which had the effect of reducing the price charged to registrars) of no less than one hundred eighty (180) calendar days.</p> <p>Notwithstanding the foregoing sentence, with respect to renewal of domain name registrations: (i) Registry Operator need only provide thirty (30) calendar days notice of any price increase if the resulting price is less than or equal to (A) for the period beginning on the Effective Date and ending twelve (12) months following the Effective Date, the initial price charged for registrations in the TLD, or (B) for subsequent periods, a price for which Registry</p>	<p>Transparency will be enhanced by specifying that the notice should go to ICANN in addition to registrars.</p>

Section	Topic	Change to Text	Rationale and Comments
		Operator provided a notice pursuant to the first sentence of this Section 2.10(b) within the twelve (12) month period preceding the effective date of the proposed price increase; and (ii) Registry Operator need not provide notice of any price increase for the imposition of the Variable Registry-Level Fee set forth in Section 6.3. Registry Operator shall offer registrars the option to obtain domain name registration renewals at the current price (i.e. the price in place prior to any noticed increase) for periods of one to ten years at the discretion of the registrar, but no greater than ten years.	
Specification 2	Data Escrow Requirements	1.1 "Full Deposit" will consist of data that reflects the state of the registry as of 00:00:00 UTC on each Sunday. <del>Pending transactions at that time (i.e., transactions that have not been committed) will not be reflected in the Full Deposit.</del>	Sentence removed to avoid confusion -- previous language could be read to indicate that, for example, pending transactions (e.g., pending creates, pending updates) should not be included in a full deposit, which is not the case.
Specification 6	Registry Interoperability & Continuity	No text changes	Numbering in sections 4 and 5 corrected.
Specification 9	Registry Operator Code of Conduct	If Registry Operator or a Registry Related Party also operates as a provider of registrar or registrar-reseller services, Registry Operator will, or will cause such Registry Related Party to, <u>ensure that such services are offered through a legal entity separate from Registry Operator, and</u> maintain separate books of accounts with respect to its registrar or registrar-reseller operations.	In most cases registry operators will be able to own and operate registrars in new gTLDs, but the registry and registrar must be separate legal entities (e.g., one could be a subsidiary or sister corporation to the other), provided that the registry operator may, directly or indirectly, partially or wholly-own such legal entity. A primary reason for requiring the registry and a registrar to be separate legal entities is that the Registry Agreement contains numerous provisions that refer to the existence of, and mandatory provisions in, a registry-registrar agreement,

Section	Topic	Change to Text	Rationale and Comments
			<p>and such an agreement could not exist if the registry and registrar were the same legal entity since a contract must have two or more parties. Registry Operators may request an exemption to the Code of Conduct if Registry Operator demonstrates to ICANN’s reasonable satisfaction that (i) all domain name registrations in the TLD are registered to, and maintained by, Registry Operator for its own exclusive use, (ii) Registry Operator does not sell, distribute or transfer control or use of any registrations in the TLD to any third party that is not an Affiliate (as defined in the Registry Agreement) of Registry Operator, and (iii) application of this Code of Conduct to the TLD is not necessary to protect the public interest. Note also that ICANN reserves the right to refer any application to the appropriate competition authority relative to any cross-ownership issues.</p>
<i>Module 6</i>			
5	Terms & Conditions	<p>Applicant shall indemnify, defend, and hold harmless ICANN (including its affiliates, subsidiaries, directors, officers, employees, consultants, evaluators, and agents, collectively the ICANN Affiliated Parties) from and against any and all third-party claims, damages, liabilities, costs, and expenses, including legal fees and expenses, arising out of or relating to: (a) ICANN’s or an ICANN Affiliated Party’s consideration of the application, and any approval, <del>or</del> rejection <u>or withdrawal</u> of the application; and/or (b) ICANN’s or an ICANN Affiliated Party’s reliance on information provided by applicant in the application.</p>	<p>This section is updated to account for withdrawal of an application by an applicant.</p>
6	Terms &	Applicant hereby releases ICANN and the ICANN Affiliated	This section is updated to account for withdrawal of an

Section	Topic	Change to Text	Rationale and Comments
	Conditions	<p>Parties from any and all claims by applicant that arise out of, are based upon, or are in any way related to, any action, or failure to act, by ICANN or any ICANN Affiliated Party in connection with ICANN’s or an ICANN Affiliated Party’s review of this application, investigation or verification, any characterization or description of applicant or the information in this application, <u>any withdrawal of this application</u> or the decision by ICANN to recommend, or not to recommend, the approval of applicant’s gTLD application. APPLICANT AGREES NOT TO CHALLENGE, IN COURT OR IN ANY OTHER JUDICIAL FORA, ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION, AND IRREVOCABLY WAIVES ANY RIGHT TO SUE OR PROCEED IN COURT OR ANY OTHER JUDICIAL FOR A ON THE BASIS OF ANY OTHER LEGAL CLAIM AGAINST ICANN AND ICANN AFFILIATED PARTIES WITH RESPECT TO THE APPLICATION. APPLICANT ACKNOWLEDGES AND ACCEPTS THAT APPLICANT’S NONENTITLEMENT TO PURSUE ANY RIGHTS, REMEDIES, OR LEGAL CLAIMS AGAINST ICANN OR THE ICANN AFFILIATED PARTIES IN COURT OR ANY OTHER JUDICIAL FORA WITH RESPECT TO THE APPLICATION SHALL MEAN THAT APPLICANT WILL FOREGO ANY RECOVERY OF ANY APPLICATION FEES, MONIES INVESTED IN BUSINESS INFRASTRUCTURE OR OTHER STARTUP COSTS AND ANY AND ALL PROFITS THAT APPLICANT MAY EXPECT TO REALIZE FROM THE OPERATION OF A REGISTRY FOR THE TLD; PROVIDED, THAT APPLICANT MAY UTILIZE ANY ACCOUNTABILITY MECHANISM SET FORTH IN ICANN’S BYLAWS FOR PURPOSES OF CHALLENGING ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION. APPLICANT</p>	<p>application by an applicant.</p>

Section	Topic	Change to Text	Rationale and Comments
		<p>ACKNOWLEDGES THAT ANY ICANN AFFILIATED PARTY IS AN EXPRESS THIRD PARTY BENEFICIARY OF THIS SECTION 6 AND MAY ENFORCE EACH PROVISION OF THIS SECTION 6 AGAINST APPLICANT.</p>	
8	Terms & Conditions	<p>Applicant certifies that it has obtained permission for the posting of any personally identifying information included in this application or materials submitted with this application. Applicant acknowledges that the information that ICANN posts may remain in the public domain in perpetuity, at ICANN’s discretion. <u>Applicant acknowledges that ICANN will handle personal information collected in accordance with its gTLD Program privacy statement &lt;<a href="http://newgtlds.icann.org/en/applicants/agb/program-privacy">http://newgtlds.icann.org/en/applicants/agb/program-privacy</a>&gt;, which is incorporated herein by this reference. If requested by ICANN, Applicant will be required to obtain and deliver to ICANN and ICANN's background screening vendor any consents or agreements of the entities and/or individuals named in questions 1-11 of the application form necessary to conduct these background screening activities. In addition, Applicant acknowledges that to allow ICANN to conduct thorough background screening investigations:</u></p> <ul style="list-style-type: none"> <li>a. <u>Applicant may be required to provide documented consent for release of records to ICANN by organizations or government agencies;</u></li> <li>b. <u>Applicant may be required to obtain specific government records directly and supply those</u></li> </ul>	<p>Updated to provide additional detail on steps that may be required of applicants during the background screening process, based on discussions with potential service providers.</p>

Section	Topic	Change to Text	Rationale and Comments
		<p><u>records to ICANN for review;</u></p> <p><u>c. Additional identifying information may be required to resolve questions of identity of individuals within the applicant organization;</u></p> <p><u><del>b.</del>d. Applicant may be requested to supply certain information in the original language as well as in English.</u></p>	
14	Terms & Conditions	<p>ICANN reserves the right to make reasonable updates and changes to this applicant guidebook and to the application process, <u>including the process for withdrawal of applications</u>, at any time by posting notice of such updates and changes to the ICANN website, including as the possible result of new policies that might be adopted or advice to ICANN from ICANN advisory committees during the course of the application process. Applicant acknowledges that ICANN may make such updates and changes and agrees that its application will be subject to any such updates and changes. In the event that Applicant has completed and submitted its application prior to such updates or changes and Applicant can demonstrate to ICANN that compliance with such updates or changes would present a material hardship to Applicant, then ICANN will work with Applicant in good faith to attempt to make reasonable accommodations in order to mitigate any negative consequences for Applicant to the extent possible consistent with ICANN's mission to ensure the stable and secure operation of the Internet's unique identifier</p>	<p>This section is updated to account for withdrawal of an application by an applicant.</p>

Section	Topic	Change to Text	Rationale and Comments
		systems.	

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RESPONDENT'S EXHIBIT

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## Approved Board Resolutions | Special Meeting of the ICANN Board

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10 Apr 2012

### Establishment of New gTLD Program Committee

Resolved (2012.04.10.01), the Board hereby establishes the Board New gTLD Program Committee as follows: (i) the voting members of the Committee will consist of: Rod Beckstrom, Cherine Chalaby, Chris Disspain, Bill Graham, Erika Mann, Gonzalo Navarro, Ray Plzak, R. Ramaraj, George Sadowsky, Mike Silber, and Kuo-Wei Wu; (ii) the liaisons to the Committee will be Thomas Roessler; and (iii) the Chair of the Committee will be Cherine Chalaby.

Resolved (2012.04.10.02), the Board hereby delegates to the Board New gTLD Program Committee all legal and decision making authority of the Board relating to the New gTLD Program (for the round of the Program, which commenced in January 2012 and for the related Applicant Guidebook that applies to this current round) as set forth in its Charter, which excludes those things that the Board is prohibited from delegating by law, or pursuant to Article XII, Section 2 of the ICANN Bylaws.

Resolved (2012.04.10.03), all members of the New gTLD Program Committee reinforce their commitment to the 8 December 2011 Resolution of the Board (Resolution 2011.12.08.19) regarding Board member conflicts, and specifying in part: "Any and all Board members who approve any new gTLD application shall not take a contracted or employment position with any company sponsoring or in any way involved with that new gTLD for 12 months after the Board made the decision on the application."

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Resolved (2012.04.10.04), the Board directs the CEO to prepare a document setting forth a process for the creation of Board Committees to address future situations where there may be multiple Board members with perceived, potential or actual conflicts of interest on an issue.

## Rationale for Resolutions 2012.04.10.01-2012.04.10.04

*In order to have efficient meetings and take appropriate actions with respect to the New gTLD Program for the current round of the Program and as related to the Applicant Guidebook, the Board decided to create the "New gTLD Program Committee" in accordance with Article XII of the Bylaws and has delegated decision making authority to the Committee as it relates to the New gTLD Program for the current round of the Program which commenced in January 2012 and for the related Applicant Guidebook that applies to this current round.*

*Establishing this new Committee without conflicted members, and delegating to it decision making authority, will provide some distinct advantages. First, it will eliminate any uncertainty for conflict Board members with respect to attendance at Board meetings and workshops since the New gTLD Program topics can be dealt with at the Committee level. Second, it will allow for actions to be taken without a meeting by the committee. As the Board is aware, actions without a meeting cannot be taken unless done via electronic submission by unanimous consent; such unanimous consent cannot be achieved if just one Board member is conflicted. Third, it will provide the community with a transparent view into the Board's commitment to dealing with actual, potential or perceived conflicts.*

*This resolution should have a positive impact on the community and ICANN as a whole as the New gTLD Program Committee will be able to take actions relating to the New gTLD Program for the current round of the Program and as related to the Applicant Guidebook without any question of conflict arising. No fiscal impact is anticipated as a result of this action and there will be no impact on the security, stability no resiliency of the domain name system.*



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**RESPONDENT'S EXHIBIT**

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22 Oct 2015

1. [Consent Agenda:](#)

- a. [Approval of Board Meeting Minutes](#)
- b. [Delegation of IDN ccTLD ελ representing Greece in Greek script](#)  
*Rationale for Resolutions 2015.10.22.02 – 2015.10.22.03*
- c. [Delegation of IDN ccTLD عراق representing Iraq in Arabic script](#)  
*Rationale for Resolutions 2015.10.22.04 – 2015.10.22.05*
- d. [Approval for Contracting and Disbursement for CRM Platform Enhancement](#)  
*Rationale for Resolutions 2015.10.22.06 – 2015.10.22.07*
- e. [Thank You to Community Members](#)
- f. [Thank You to Local Host of \[ICANN 54 Meeting\]\(#\)](#)
- g. [Thank You to Sponsors of \[ICANN 54 Meeting\]\(#\)](#)
- h. [Thank You to Interpreters, Staff, Event and Hotel Teams of \[ICANN 54 Meeting\]\(#\)](#)

2. [Main Agenda:](#)

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*Rationale for Resolutions 2015.10.22.15 – 2015.10.22.16*

- d. [Consideration of Independent Review Panel's Final Declaration in \*Vistaprint v. ICANN\*](#)

*Rationale for Resolutions 2015.10.22.17 – 2015.10.22.19*

- e. [Thank You to Wolfgang Kleinwächter for his service to the ICANN Board 27](#)
- f. [Thank You to Gonzalo Navarro for his service to the ICANN Board](#)
- g. [Thank You to Ray Plzak for his service to the ICANN Board](#)

## 1. Consent Agenda:

### a. Approval of Board Meeting Minutes

Resolved (2015.10.22.01), the Board approves the minutes of the 28 September 2015 Regular Meeting of the [ICANN Board](#).

### b. Delegation of IDN ccTLD ελ representing Greece in Greek script

Resolved (2015.10.22.02), as part of the exercise of its responsibilities under the [IANA Functions Contract](#), [ICANN](#) has reviewed and evaluated the request to delegate the ελ country-code top-level domain to ICS-FORTH GR. The documentation demonstrates that the proper procedures were followed in evaluating the request.

Resolved (2015.10.22.03), the Board directs that pursuant to Article III, Section 5.2 of the [ICANN Bylaws](#), that certain portions of the rationale not appropriate for public distribution within the resolutions, preliminary report or minutes at this time due to contractual obligations, shall be withheld until public release is allowed pursuant to those contractual obligations.

*Rationale for Resolutions 2015.10.22.02 – 2015.10.22.03*

**Why the Board is addressing the issue now?**

In accordance with the IANA Functions Contract, the ICANN staff has evaluated a request for ccTLD delegation and is presenting its report to the Board for review. This review by the Board is intended to ensure that ICANN staff has followed the proper procedures.

By way of background, the ελ (“el”) string was able to proceed to the IANA delegation step following its completion of the IDN ccTLD Fast Track Process. The string was initially rejected by the IDN ccTLD Fast Track DNS Stability Panel based on possible string similarity concerns between the candidate string and entries on the ISO 3166-1 list. However, in October 2014, a second review panel called the Extended Process Similarity Review Panel (EPSRP) found that “the candidate string is not confusingly similar to any ISO 3166-1 entries”. The EPSRP report is available at: <https://www.icann.org/en/system/files/files/epsrp-greece-30sep14-en.pdf>. The EPSRP findings allowed the string to successfully complete the IDN ccTLD Fast Track string evaluation process and proceed to the IANA delegation process.

**What is the proposal being considered?**

The proposal is to approve a request to IANA to create the country-code top-level domain and assign the role of sponsoring organization (also known as the manager or trustee) to ICS-FORTH GR.

**Which stakeholders or others were consulted?**

In the course of evaluating a delegation application, ICANN staff consults with the applicant and other interested parties. As part of the application process, the applicant needs to describe consultations that were performed within the country concerning the ccTLD, and their applicability to their local Internet community.

**What concerns or issues were raised by the community?**

Staff is not aware of any significant issues or concerns raised by the community in relation to this request.

**What significant materials did the Board review?**

*Redacted – Sensitive Delegation Information*

**What factors the Board found to be significant?**

The Board did not identify any specific factors of concern with this request.

**Are there positive or negative community impacts?**

The timely approval of country-code domain name managers that meet the various public interest criteria is positive toward ICANN's overall mission, the local communities to which country- code top-level domains are designated to serve, and responsive to ICANN's obligations under the IANA Functions Contract.

**Are there financial impacts or ramifications on ICANN (strategic plan, operating plan, budget); the community; and/or the public?**

The administration of country-code delegations in the DNS root zone is part of the IANA functions, and the delegation action should not cause any significant variance on pre-planned expenditure. It is not the role of ICANN to assess the financial impact of the internal operations of country-code top-level domains within a country.

**Are there any security, stability or resiliency issues relating to the DNS?**

ICANN does not believe this request poses any notable risks to security, stability or resiliency. This is an Organizational Administrative Function not requiring public comment.

c. Delegation of IDN ccTLD عراق representing Iraq in Arabic script

Resolved (2015.10.22.04), as part of the exercise of its responsibilities under the IANA Functions Contract, ICANN has reviewed and evaluated the request to delegate the عراق country-code top-level domain to Communications and Media Commission (CMC). The documentation demonstrates that the

proper procedures were followed in evaluating the request.

Resolved (2015.10.22.05), the Board directs that pursuant to Article III, Section 5.2 of the ICANN Bylaws, that certain portions of the rationale not appropriate for public distribution within the resolutions, preliminary report or minutes at this time due to contractual obligations, shall be withheld until public release is allowed pursuant to those contractual obligations.

### *Rationale for Resolutions 2015.10.22.04 – 2015.10.22.05*

#### **Why the Board is addressing the issue now?**

In accordance with the IANA Functions Contract, the ICANN staff has evaluated a request for ccTLD delegation and is presenting its report to the Board for review. This review by the Board is intended to ensure that ICANN staff has followed the proper procedures.

#### **What is the proposal being considered?**

The proposal is to approve a request to IANA to create the country-code top-level domain and assign the role of sponsoring organization (also known as the manager or trustee) to Communications and Media Commission (CMC).

#### **Which stakeholders or others were consulted?**

In the course of evaluating a delegation application, ICANN staff consults with the applicant and other interested parties. As part of the application process, the applicant needs to describe consultations that were performed within the country concerning the ccTLD, and their applicability to their local Internet community.

#### **What concerns or issues were raised by the community?**

ICANN is not aware of any significant issues or concerns raised by the community in relation to this request.

#### **What significant materials did the Board review?**

*Redacted – Sensitive Delegation Information*

**What factors the Board found to be significant?**

The Board did not identify any specific factors of concern with this request.

**Are there positive or negative community impacts?**

The timely approval of country-code domain name managers that meet the various public interest criteria is positive toward ICANN's overall mission, the local communities to which country- code top-level domains are designated to serve, and responsive to ICANN's obligations under the IANA Functions Contract.

**Are there financial impacts or ramifications on ICANN (strategic plan, operating plan, budget); the community; and/or the public?**

The administration of country-code delegations in the DNS root zone is part of the IANA functions, and the delegation action should not cause any significant variance on pre-planned expenditure. It is not the role of ICANN to assess the financial impact of the internal operations of country-code top-level domains within a country.

**Are there any security, stability or resiliency issues relating to the DNS?**

ICANN does not believe this request poses any notable risks to security, stability or resiliency.

This is an Organizational Administrative Function not requiring public comment.

d. **Approval for Contracting and Disbursement for CRM Platform Enhancement**

Whereas, ICANN has been using a CRM platform that was architected in 2013 to specifically support applicant tracking and applications management for the New gTLD Program, on top of which an online portal to support registries was built.

Whereas, ICANN has identified the need to comprehensively support end-to-end interactions with contracted parties, from

applicant tracking through all interactions with registries and registrars, to contractual compliance and all associated reporting and community-facing dashboards.

Whereas, ICANN has determined to engage technical consultants from a vendor having the unique expertise, experience and knowledge, allowing ICANN to successfully improve and enhance its CRM platform.

Whereas, the Board Finance Committee (BFC) reviewed the financial implications of the project totaling [AMOUNT REDACTED] of which [AMOUNT REDACTED] in FY16 has recommended approval by the Board.

Whereas, certain members of the Board Risk Committee have reviewed the suggested project solution and have provided guidance to staff on risks and useful mitigation actions.

Whereas, both the staff and the BFC have recommended that the Board authorize the President and CEO, or his designee(s), to take all actions necessary to execute the contract(s) needed to improve and enhance ICANN'S CRM platform, and make all necessary disbursements pursuant to those contract(s).

Resolved (2015.10.22.06), the Board authorizes the President and CEO, or his designee(s), to take all necessary actions to execute the contract(s) for the CRM platform project and make all necessary disbursements pursuant to those contract(s).

Resolved (2015.10.22.07), specific items within this resolution shall remain confidential for negotiation purposes pursuant to Article III, section 5.2 of the ICANN Bylaws until the President and CEO determines that the confidential information may be released.

### *Rationale for Resolutions 2015.10.22.06 – 2015.10.22.07*

In 2013, ICANN developed the initial version of its Salesforce.com platform, or pilot CRM solution, to support the needs of the business operations of the New gTLD Program. In March of 2014, ICANN extended the functionality by building an online portal to support registries. It is expected that this solution will continue to achieve its goal and will continue to

support processing all remaining new gTLD applications through 2017.

ICANN is planning to add significant value for its constituencies and is envisioning extending this platform to include capabilities for end-to-end interactions with contracted parties, from applicant tracking through all interactions with registries and registrars, to contractual compliance and all associated reporting and community-facing dashboards.

In support of extending the capabilities, the staff performed a thorough analysis of the current platform, including engaging a third party to independently assess the extensibility of the current design, and have concluded that a reformed design affords the opportunity to leverage lessons learned, out-of-the-box functionality (without significant programming and testing), and efficient, stable and mature business processes. Most importantly, it provides an opportunity to create a foundation that is architected to be secure, scalable, extensible and aligned with the future goals and objectives of the business.

Building the improved and enhanced CRM platform foundation can be achieved with outside resources, inside resources, or a strategic combination of the two. Both business operations and IT believe that ICANN does not currently have the proper skill set in house to take on this project without assistance.

Therefore, ICANN plans to engage expert technical consultants from a vendor for a period of nine to twelve months that have unique architecture skills and deep platform knowledge. The cost of the project is expected to be approximately [AMOUNT REDACTED], inclusive of travel expenses, of which approximately [AMOUNT REDACTED] during FY16.

Concurrently to the engagement with the expert consultants, ICANN plans to on-board an incremental four highly skilled technical staff members who will transition both the development efforts and on-going maintenance from the vendor to ICANN, in order to sustainably maintain and continuously enhance the platform. Working together with the vendor's recommendation, the four roles are currently envisioned to include a Solution Architect, Senior Business Analyst, Senior Technical Developer and a Senior Admin Configurator. This will result in an incremental expense of approximately [AMOUNT REDACTED] in FY17 and thereafter. This action does not have any direct impact on the security, stability or

resiliency of the domain name system.

The obligation under the intended vendor contract will exceed US\$500,000 and as such, entering into this engagement requires Board approval.

This is an Organizational Administrative function that does not require public comment.

#### e. Thank You to Community Members

Whereas, ICANN wishes to acknowledge the considerable effort, skills, and time that members of the stakeholder community contribute to ICANN.

Whereas, in recognition of these contributions, ICANN wishes to acknowledge and thank members of the community when their terms of service end on the Advisory Committees and Supporting Organizations.

Whereas, the following members of the At-Large community are concluding their terms of service:

- Ms. Fátima Cambronero, At-Large Advisory Committee Member
- Mr. Garth Bruen, North American Regional At-Large Organization Chair
- Mr. Olivier Crépin-Leblond, At-Large Advisory Committee Member
- Mr. Eduardo Diaz, At-Large Advisory Committee Member
- Mr. Rafid Fatani, At-Large Advisory Committee Member
- Ms. Beran Dondeh Gillen, At-Large Advisory Committee Member
- Mr. Wolf Ludwig, European Regional At-Large Organization Chair
- Mr. Glenn McKnight, At-Large Advisory Committee Member
- Ms. Yuliya Morenets, European Regional At-Large

Organization Secretariat

- Ms. Hadja Ouattara, At-Large Advisory Committee Member

Resolved (2015.10.22.08), Fátima Cambroneró, Garth Bruen, Olivier Crépin-Leblond, Eduardo Diaz, Rafid Fatani, Beran Dondeh Gillen, Wolf Ludwig, Glenn McKnight, Yuliya Morenets, and Hadja Ouattara have earned the deep appreciation of the Board of Directors for their terms of service, and the Board of Directors wishes them well in their future endeavors within the ICANN community and beyond.

Whereas, the following member of the Root Server System Advisory Committee has concluded his term of service:

- Mr. Marc Blanchet, Liaison from the Internet Architecture Board

Resolved (2015.10.22.09), Marc Blanchet has earned the deep appreciation of the Board of Directors for his terms of service, and the Board of Directors wishes him well in his future endeavors within the ICANN community and beyond.

Whereas, the following member of Address Supporting Organization has concluded his term of service:

- Ron da Silva, Address Council Member

Resolved (2015.10.22.10), Ron da Silva has earned the deep appreciation of the Board of Directors for his terms of service, and the Board of Directors wishes him well in his future endeavors within the ICANN community and beyond.

Whereas, the following members of the County Code Names Supporting Organization (ccNSO) are concluding their terms of service:

- Mr. Victor Abboud, ccNSO Councilor
- Mr. Martin Boyle, ccNSO Member
- Mr. Keith Davidson, ccNSO Vice Chair
- Mr. Jordi Iparraguirre, ccNSO Councilor

Ms. Dotty Sparks le Blanc, Councilor

Resolved (2015.10.22.11), Victor Abboud, Martin Boyle, Keith Davidson, Jordi Iparraguirre, and Dotty Sparks le Blanc have earned the deep appreciation of the Board of Directors for their terms of service, and the Board of Directors wishes them well in their future endeavors within the ICANN community and beyond.

Whereas, the following members of the Generic Names Supporting Organization (GNSO) are concluding their terms of service:

- Mr. Rafik Dammak, Non-Commercial Stakeholders Group Chair
- Ms. Avri Doria, GNSO Councilor
- Mr. Keith Drazek, Registries Stakeholder Group Chair
- Mr. Bret Fausett, GNSO Councilor
- Mr. Tony Holmes, GNSO Councilor
- Mr. Yoav Keren, GNSO Councilor
- Mr. Osvaldo Novoa, GNSO Councilor
- Mr. Daniel Reed, GNSO Councilor
- Mr. Thomas Rickert, GNSO Councilor
- Mr. Jonathan Robinson, GNSO Council Chair
- Mr. Brian Winterfeldt, GNSO Councilor

Resolved (2015.10.22.12), Rafik Dammak, Avri Doria, Keith Drazek, Bret Fausett, Tony Holmes, Yoav Keren, Osvaldo Novoa, Daniel Reed, Thomas Rickert, Jonathan Robinson, and Brian Winterfeldt have earned the deep appreciation of the Board of Directors for their terms of service, and the Board of Directors wishes them well in their future endeavors within the ICANN community and beyond.

f. **Thank You to Local Host of ICANN 54 Meeting**

The Board wishes to extend its thanks to the local host

organizer, Internet Neutral Exchange Association (INEX), for its support. Special thanks are extended to Niall Murphy, INEX Chair, Barry Rhodes, INEX Chief Executive Officer, Eileen Gallagher, Head of Marketing and Membership Development, and the entire INEX staff.

g. **Thank You to Sponsors of ICANN 54 Meeting**

The Board wishes to thank the following sponsors: Minds + Machines Group, Neustar, Uniregistry Corp., Verisign, Inc., China Internet Network Information Center (CNNIC), Afilias Limited, EURid, Rightside, CentralNic, Domain Name Services, Nominet, NCC Group, Public Interest Registry, PDR Solutions FZC, Dyn, Trademark Clearinghouse, Radix FZC, Sedo, TLDs Powered by Verisign, Asian Domain Name Dispute Resolution Centre, Teleinfo Network, IDA Ireland, IE Domain Registry Limited, Blacknight Internet Solutions Ltd., Interconnect Communications Ltd., Failte Ireland / Tourism Ireland and Tapastreet.

h. **Thank You to Interpreters, Staff, Event and Hotel Teams of ICANN 54 Meeting**

The Board expresses its deepest appreciation to the scribes, interpreters, audiovisual team, technical teams, and the entire ICANN staff for their efforts in facilitating the smooth operation of the meeting.

The Board would also like to thank the management and staff of the Convention Centre Dublin for providing a wonderful facility to hold this event. Special thanks are extended to Anne McMonagle, Account Manager, International Associations, Emma O'Brien, Acting Senior Event Manager, Adrienne Clarke, Head of Conference Sales and Edel Malone, Credit Controller.

2. **Main Agenda:**

a. **Thank You to the 2015 Nominating Committee**

Whereas, ICANN appointed Stéphane Van Gelder as Chair of

the 2015 Nominating Committee, Ron Andruff as Chair-Elect of the 2015 Nominating Committee, and Cheryl Langdon-Orr as Associate Chair.

Whereas, the 2015 Nominating Committee consisted of delegates from each of ICANN's constituencies and advisory bodies.

Whereas, the following members of the Nominating Committee are concluding their terms of service:

- Mr. Ron Andruff, Chair-Elect
- Mr. Satish Babu, Member
- Mr. John Berryhill, Member
- Mr. Alain Bidron, Member
- Mr. Don Blumenthal, Member
- Ms. Sarah Deutsch, Member
- Mr. Robert Guerra, Member
- Mr. Louis Houle, Member
- Mr. Juhani Juselius, Member
- Mr. Brenden Kuerbis, Member
- Ms. Cheryl Langdon-Orr, Associate Chair
- Mr. John Levine, Member
- Mr. William Manning, Member
- Ms. Fatimata Seye Sylla, Member

Resolved (2015.10.22.13), Ron Andruff, Satish Babu, John Berryhill, Alain Bidron, Don Blumenthal, Sarah Deutsch, Robert Guerra, Louis Houle, Juhani Juselius, Brenden Keurbis, Cheryl Langdon-Orr, John Levine, William Manning, and Fatimata Seye Sylla have earned the deep appreciation of the Board of Directors for their terms of service, and the Board of Directors wishes them well in their future endeavors within the ICANN community and beyond.

b. GNSO gTLD Registries Stakeholder Group  
Charter Amendments (2015)

Whereas, the gTLD Registries Stakeholder Group (RySG) of the GNSO has proposed a series of amendments to its governing Charter document.

Whereas, the RySG, ICANN staff, and the Organizational Effectiveness Committee (OEC) have completed all requirements associated with the Board [Process For Amending GNSO Stakeholder Group and Constituency Charters](#).

Whereas, the Board notes community support for the existing amendments and acknowledges community suggestions that a more holistic consideration of the voting, membership and structural issues of the RySG Charter is merited.

Resolved (2015.10.22.14), that the ICANN Board approves the gTLD Registries Stakeholder Group Charter Amendments with encouragement to the RySG to consider a broader examination of the weighted voting, membership and structural matters regarding the operations of the stakeholder group. ICANN staff should inform the RySG leadership of this resolution and work with the RySG to ensure it provides access to the new governing document on the appropriate RySG web pages.

*Rationale for Resolution 2015.10.22.14*

**Why is the Board addressing this issue now?**

ICANN Bylaws (Article X, Section 5.3) state, "Each Stakeholder Group shall maintain recognition with the ICANN Board." The Board has interpreted this language to require that the ICANN Board formally approve any amendments to the governing documents of Stakeholder Groups (SG) and/or Constituencies in the Generic Names Supporting Organization (GNSO).

In September 2013, the Board established a [Process For Amending GNSO Stakeholder Group and Constituency Charters](#) (Process) to provide a streamlined methodology for compliance with the Bylaws requirement.

Earlier this year, the gTLD Registries Stakeholder Group

(RySG) of the GNSO approved amendments to its governing documents and availed itself of the Process.

### **What are the proposals being considered?**

The Stakeholder Group has amended its existing Charter document to adjust to an evolving composition of membership and to enable it to more effectively undertake its policy development responsibilities. Among a number of amendments, the most substantial charter changes are in the following areas:

- Changes to the classifications of “active” and “inactive” RySG members;
- Adding the concept of “staggered” terms for RySG officers;
- Creation of a “Vice Chair of Policy” officer position;
- Creation of a “Vice Chair of Administration” officer position;
- Adjustments to the formula for calculating an RySG meeting quorum;
- Adding a new election nomination procedure; and
- Other minor format and non-substantive editorial changes.

### **What stakeholders or others were consulted?**

The proposed amendments were subjected to a 40-day Public Comment period (8 May - 16 June 2015). When the period was completed staff produced a Summary Report for community review on 15 July 2015.

### **What significant materials did the Board review?**

The Board reviewed a redline formatted document of the proposed charter amendments and a copy of the Staff Summary Report summarizing community comments.

### **What factors did the Board find to be significant?**

The GNSO Registries Stakeholder Group (RySG), ICANN staff, and the Organizational Effectiveness Committee completed all steps identified in the Process including a determination that the proposed charter amendments will not raise any fiscal or liability concerns for the ICANN organization and publication of

the amendments for community review and comment.

**Are there Positive or Negative Community Impacts?**

The Stakeholder Group has amended its existing Charter document to adjust to an evolving composition of membership and to enable it to more effectively undertake its policy development responsibilities.

**Are there fiscal impacts/ramifications on ICANN (Strategic Plan, Operating Plan, Budget); the community; and/or the public?**

No.

**Are there any Security, Stability or Resiliency issues relating to the DNS?**

There is no anticipated impact from this decision on the security, stability and resiliency of the domain name system as a result of this decision.

**Is this either a defined policy process within ICANN's Supporting Organizations or ICANN's Organizational Administrative Function decision requiring public comment or not requiring public comment?**

The proposed amendments were subjected to a 40-day Public Comment period (8 May 2015 - 16 June 2015).

c. **Decommissioning of the New gTLD Program Committee**

Whereas, in order to have efficient meetings and take appropriate actions with respect to the New gTLD Program, on 10 April 2012, the Board took action to create the New gTLD Program Committee ("NGPC") in accordance with Article XII of the Bylaws.

Whereas, the Board delegated decision-making authority to the NGPC as it relates to the New gTLD Program for the current round of the Program and for the related Applicant Guidebook that applies to this current round.

Whereas, the reasons that led to the formation of the NGPC no longer exist as they did at formation.

Whereas, the Board Governance Committee (“BGC”) has considered the necessity of maintaining the NGPC as a standing committee of the Board, and recommended that the Board decommission the NGPC.

Resolved (2015.10.22.15), the ICANN Board New gTLD Program Committee is hereby decommissioned.

Resolved (2015.10.22.16), the Board wishes to acknowledge and thank the NGPC Chair and all of its members for the considerable energy, time, and skills that members of the NGPC brought to the oversight of the 2012 round of the New gTLD Program.

### *Rationale for Resolutions 2015.10.22.15 – 2015.10.22.16*

Section 1, Article XII of the ICANN Bylaws provide that the Board may establish or eliminate Board committees, as the Board deems appropriate. (Bylaws, Art. XII, § 1.) The Board has delegated to the BGC the responsibility for periodically reviewing and recommending any charter adjustments to the charters of Board committees deemed advisable. (See BGC Charter at <http://www.icann.org/en/committees/board-governance/charter.htm>.)

In an effort to streamline operations and maximize efficiency, the BGC reviewed the necessity and appropriateness of moving forward with the current slate of standing Board committees. At the time of formation, the Board determined that establishing the New gTLD Program Committee (“NGPC”) as a new committee without conflicted Board members, and delegating to it decision making authority, would provide some distinct advantages. First, it would eliminate any uncertainty for actual, potential or perceived conflicted Board members with respect to attendance at Board meetings and workshops since the New gTLD Program topics could be dealt with at the Committee level. Second, it would allow for actions to be taken without a meeting by the Committee. As the Board is aware, actions without a meeting cannot be taken unless done via electronic

submission by unanimous consent; such unanimous consent cannot be achieved if just one Board member is conflicted. Third, it would provide the community with a transparent view into the Board's commitment to dealing with actual, potential or perceived conflicts.

After review, the BGC determined that reasons that lead to the formation of the NGPC no longer exist as they did at formation. At this time, only two voting members of the Board are conflicted with respect to new gTLDs and as a result do not serve on the NGPC. Three of the four Board non-voting liaisons are conflicted and do not serve on the NGPC. Additionally, staff is at the tail end of implementing the current round of the New gTLD Program. All New gTLD Program processes have been exercised<sup>1</sup>, and a majority of unique gTLD strings have been delegated or are near delegation. Specifically, as of 30 September 2015, over 750 new gTLDs have been delegated. Numerous review and community activities are currently underway that will likely inform when the next round will take place and how it will be carried out.

In making its recommendation to the Board, the BGC noted, and the Board agrees, that decommissioning the NGPC does not mean that the topics addressed by the NGPC no longer exist, or are of any less import. The Board shall continue maintaining general oversight and governance over the New gTLD Program, and continue to provide strategic and substantive guidance on New gTLD-related topics as the current round of the Program comes to a conclusion. For example, there are active matters being considered by the NGPC, such as GAC advice concerning the protection for Intergovernmental Organizations, and matters that are subject to ICANN's accountability mechanisms (e.g. Requests for Reconsideration and Independent Review Processes). As a result of this resolution, the full Board will take up these matters at future meetings and address any conflict issues as appropriate.

In taking this action, the Board also reinforces its commitment to the 8 December 2011 Resolution of the Board (Resolution 2011.12.08.19) regarding Board member conflicts, and specifying in part: "Any and all Board members who approve any new gTLD application shall not take a contracted or employment position with any company sponsoring or in any way involved with that new gTLD for 12 months after the Board

made the decision on the application.”

It is not anticipated that there will be direct fiscal impacts on ICANN associated with the adoption of this resolution, and approval of this resolution will not impact security, stability or resiliency issues relating to the domain name system.

This decision is an Organizational Administrative Function that does not require public comment.

d. Consideration of Independent Review Panel’s Final Declaration in *Vistaprint v. ICANN*

Whereas, on 9 October 2015, an Independent Review Process (IRP) Panel (Panel) issued its Final Declaration in the IRP filed by Vistaprint Limited (Vistaprint) against ICANN (Final Declaration).

Whereas, Vistaprint specifically challenged the String Confusion Objection (SCO) Expert Determination (Expert Determination) finding Vistaprint’s applications for .WEBS to be confusingly similar to Web.com’s application for .WEB.

Whereas, the Panel denied Vistaprint’s IRP request because the Panel determined that the Board’s actions did not violate the Articles of Incorporation (Articles), Bylaws, or Applicant Guidebook (Guidebook). (See Final Declaration, ¶¶ 156-157, <https://www.icann.org/en/system/files/files/vistaprint-v-icann-final-declaration-09oct15-en.pdf>.)

Whereas, while the Panel found that ICANN did not discriminate against Vistaprint in not directing a re-evaluation of the Expert Determination, the Panel recommended that the Board exercise its judgment on the question of whether an additional review is appropriate to re-evaluate the Expert Determination. (See *id.* at ¶ 196, <https://www.icann.org/en/system/files/files/vistaprint-v-icann-final-declaration-09oct15-en.pdf>.)

Whereas, in accordance with Article IV, section 3.21 of ICANN’s Bylaws, the Board has considered the Panel’s Final Declaration.

Resolved (2015.10.22.17), the Board accepts the following findings of the Panel’s Final Declaration that: (1) ICANN is the

prevailing party in the Vistaprint Limited v. ICANN IRP; (2) the Board (including the Board Governance Committee) did not violate the Articles, Bylaws, or Guidebook; (3) the relevant polices, such as the standard for evaluating String Confusion Objections, do not violate any of ICANN's Articles or Bylaws reflecting principles such as good faith, fairness, transparency and accountability; (4) the time for challenging the Guidebook's standard for evaluating String Confusion Objections – which was developed in an open process and with extensive input – has passed; (5) the lack of an appeal mechanism to contest the merits of the Vistaprint SCO Expert Determination is not, in itself, a violation of ICANN's Articles or Bylaws; (6) in the absence of a party's recourse to an accountability mechanism, the ICANN Board has no affirmative duty to review the result in any particular SCO case; and (7) the IRP costs should be divided between the parties in a 60% (Vistaprint) / 40% (ICANN) proportion.

Resolved (2015.10.22.18), the Board accepts the Panel's recommendation that "ICANN's Board exercise its judgment on the question of whether an additional review mechanism is appropriate to re-evaluate the Third Expert's determination in the Vistaprint SCO, in view of ICANN's Bylaws concerning core values and non-discriminatory treatment, and based on the particular circumstances and developments noted in this Declaration, including (i) the Vistaprint SCO determination involving Vistaprint's .WEBS applications, (ii) the Board's (and NGPC's) resolutions on singular and plural gTLDs, and (iii) the Board's decisions to delegate numerous other singular/plural versions of the same gTLD strings." (Final Declaration, Pg. 70, <https://www.icann.org/en/system/files/files/vistaprint-v-icann-final-declaration-09oct15-en.pdf>.) The Board will consider this recommendation at its next scheduled meeting, to the extent it is feasible.

Resolved (2015.10.22.19), the Board directs the President and CEO, or his designee(s), to ensure that the ongoing reviews of the New gTLD Program take into consideration the issues raised by the Panel as it relates to SCOs.

*Rationale for Resolutions 2015.10.22.17 –  
2015.10.22.19*

Vistaprint filed a request for an Independent Review Process (IRP) challenging ICANN's acceptance of the String Confusion Objection (SCO) Expert Determination that found Vistaprint's applications for .WEBS to be confusingly similar to Web.com's application for .WEB (Expert Determination). In doing so, among other things Vistaprint challenged procedures, implementation of procedures, and ICANN's purported failure to correct the allegedly improperly issued Expert Determination.

On 9 October 2015, the three-member IRP Panel (Panel) issued its Final Declaration. After consideration and discussion, pursuant to Article IV, Section 3.21 of the ICANN Bylaws, the Board adopts the findings of the Panel, which are summarized below, and can be found in full at <https://www.icann.org/en/system/files/files/vistaprint-v-icann-final-declaration-09oct15-en.pdf>.

The Panel found that it was charged with “objectively” determining, whether the Board's actions are inconsistent with the Articles of Incorporation (Articles), Bylaws, and new gTLD Applicant Guidebook (Guidebook), thereby requiring that the Board's conduct be appraised independently, and without any presumption of correctness. The Panel agreed with ICANN that in determining the consistency of the Board action with the Articles, Bylaws, and Guidebook, the Panel is neither asked to, nor allowed to, substitute its judgment for that of the Board. (See Final Declaration at ¶¶ 125, 125, 127.)

Using the applicable standard of review, the Panel found that: (1) ICANN is the prevailing party in this Vistaprint Limited v. ICANN IRP; and (2) the Board (including the Board Governance Committee (BGC)) did not violate the Articles, Bylaws, or Guidebook. (See *id.* at ¶¶ 156, 157, 196.)

More specifically, the Panel found that while the Guidebook permits the Board to individually consider new gTLD applications, the Board has no affirmative duty to do so in each and every case, *sua sponte*. (See *id.* at ¶ 156.) The Panel further found that the Board's adoption and implementation of the specific elements of the New gTLD Program and Guidebook, including the string confusion objection (SCO) process, does not violate ICANN's Articles or Bylaws. (See *id.* at ¶¶ 171, 172.) The Panel also found that the time for challenging the Guidebook's standard for evaluating SCOs has

passed. (See *id.* at ¶ 172.) The Panel also concluded that the lack of an appeal mechanism to contest the merits of Vistaprint's SCO Expert Determination is not a violation of ICANN's Articles or Bylaws. (See *id.* at ¶ 174.)

Vistaprint also claimed that ICANN discriminated against Vistaprint through the Board's (and the BGC's) acceptance of the Vistaprint Expert Determination while: (i) allegedly allowing other gTLD applications with equally serious string similarity concerns to proceed to delegation; or (ii) permitting other applications that were subject to an adverse SCO determination to go through an additional review process. In response to this disparate treatment claim, the Panel found that

due to the timing and scope of Vistaprint's Reconsideration Request (and this IRP proceeding), and the time of ICANN's consultation process and subsequent NGPC resolution authorizing an additional review mechanism for certain gTLD applications that were the subject of adverse SCO decisions, the ICANN Board had not had the opportunity to exercise its judgment on the question of whether, in view of ICANN's Bylaw concerning non-discriminatory treatment and based on the particular circumstances and developments noted [in the Final Declaration], such an additional review mechanism is appropriate following the SCO expert determination involving Vistaprint's .WEBS applications. Accordingly, it follows that in response to Vistaprint's contentions of disparate treatment in this IRP, ICANN's Board—and not this Panel—should exercise its independent judgment of this issue, in the of the foregoing considerations [set forth in the Final Declaration].

(*Id.* at ¶ 191.) It should be noted, however, that while declaring that it did not have the authority to require ICANN to reject the Expert Determination and to allow Vistaprint's applications to proceed on their merits, or in the alternative, to require a three-member re-evaluation of the Vistaprint SCO objections, the Panel recommended that

the Board exercise its judgment on the questions of whether an additional review mechanism is appropriate to re-evaluate the [expert] determination in the Vistaprint SCO, in view of ICANN's Bylaws concerning core values and non-discriminatory treatment, and based on the particular circumstances and developments noted in this Declaration, including (i) the Vistaprint SCO determination involving Vistaprint's .WEBS applications; (ii) the Board's (and NGPC's) resolutions on singular and plural gTLDs, and (iii) the Board's decisions to delegate numerous other singular/plural versions of the same gTLD strings.

(*Id.* at ¶ 196.)

The Board acknowledges and accepts the foregoing recommendation by the IRP Panel. The Board will consider this recommendation at its next meeting, to the extent feasible. Further, ICANN will take the lessons learned from this IRP and apply it towards its ongoing assessments of the New gTLD Program, particularly as it relates to SCO proceedings, as applicable.

This action will have a positive financial impact on the organization as ICANN was deemed to be the prevailing party and therefore subject to partial reimbursement of some costs from Vistaprint. This action will have no direct impact on the security, stability or resiliency of the domain name system.

This is an Organizational Administrative function that does not require public comment.

e. **Thank You to Wolfgang Kleinwächter for his service to the ICANN Board**

Whereas, Wolfgang Kleinwächter was appointed by the Nominating Committee to serve as a member of the ICANN Board on 21 November 2013.

Whereas, Wolfgang Kleinwächter concluded his term on the ICANN Board on 22 October 2015.

Whereas, Wolfgang served as a member of the following Committee:

- Organizational Effectiveness Committee

Resolved (2015.10.22.20), Wolfgang Kleinwächter has earned the deep appreciation of the Board for his term of service, and the Board wishes him well in his future endeavors within the ICANN community and beyond.

f. **Thank You to Gonzalo Navarro for his service to the ICANN Board**

Whereas, Gonzalo Navarro was appointed by the Nominating Committee to serve as a member of the ICANN Board on 30 October 2009.

Whereas, Gonzalo concluded his term on the ICANN Board on 22 October 2015.

Whereas, Gonzalo served as a member of the following ICANN Board Committees and Working Groups:

- Audit Committee
- Finance Committee
- Global Relationships Committee
- Governance Committee
- New gTLD Program Committee
- Public and Stakeholder Engagement Committee
- Board-GAC Recommendation Implementation Working Group (Co-Chair)
- Board Global Relations Committee (Chair)

Resolved (2015.10.22.21), Gonzalo Navarro has earned the deep appreciation of the Board for his term of service, and the Board wishes him well in his future endeavors within the ICANN community and beyond.

g. **Thank You to Ray Plzak for his service to the ICANN Board**

Whereas, Ray Plzak was appointed to serve by the Address Supporting Organization (ASO) as a member of the ICANN Board on 24 April 2009.

Whereas, Ray concludes his term on the ICANN Board on 22 October 2015.

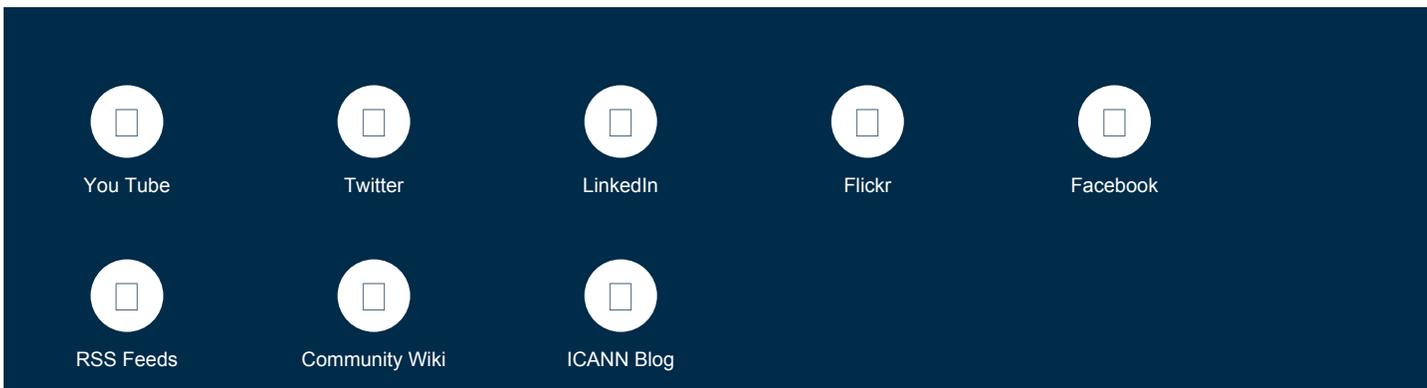
Whereas, Ray has served as a member of the following Committees and Working Groups:

- Audit Committee
- Governance Committee
- New gTLD Program Committee
- Organizational Effectiveness Committee, formerly known as the Structural Improvements Committee (former Chair)
- Risk Committee
- Board-GAC Recommendation Implementation Working Group

Resolved (2015.10.22.22), Ray Plzak has earned the deep appreciation of the Board for his term of service, and the Board wishes him well in his future endeavors within the ICANN community and beyond.

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<sup>1</sup> As of 31 July 2015, two of the seven major Program processes defined in the Applicant Guidebook are complete (i.e. Application Window and Application Evaluation), and two are approximately 90% complete (i.e. Dispute Resolution and Contention Resolution). Contracting and Pre-Delegation Testing are well over halfway complete, while Delegation is approximately 52% complete.



**Who We Are**

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- Staff
- Careers
- Newsletter
- Development and Public Responsibility

**Contact Us**

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- PGP Keys
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- Registry Liaison
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- Request a Speaker For Journalists

**Accountability & Transparency**

- Accountability Mechanisms
- Independent Review Process
- Request for Reconsideration
- Ombudsman

**Governance**

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- Planning
- Dashboard Beta
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**Help**

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- Name Collision
- Registrar Problems
- WHOIS

R-19

RESPONDENT'S EXHIBIT



## Governmental Advisory Committee

Beijing, People's Republic of China – 11 April 2013

### **GAC Communiqué – Beijing, People's Republic of China<sup>1</sup>**

#### **I. Introduction**

The Governmental Advisory Committee (GAC) of the Internet Corporation for Assigned Names and Numbers (ICANN) met in Beijing during the week of 4 April 2013. Sixty-one (61) GAC Members participated in the meetings and eight (8) Observers. The GAC expresses warm thanks to the local hosts China Internet Network Information Center (CNNIC), China Organizational Name Administration Center (CONAC), and Internet Society of China for their support.

#### **II. Internal Matters**

##### **1. New Members and Observers**

The GAC welcomes Belarus, Cape Verde, Côte d'Ivoire, Lebanon, and the Republic of the Marshall Islands to the Committee as members, and The World Meteorological Organisation as an Observer.

##### **2. GAC Secretariat**

Following a request for proposals, the GAC received presentations from two organizations and agreed that one such candidate should be providing secretariat services to the GAC, with the aim of becoming operational as soon as possible. Negotiations with such organization will start immediately after the Beijing meeting.

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<sup>1</sup> To access previous GAC advice, whether on the same or other topics, past GAC communiqués are available at: <https://gacweb.icann.org/display/gacweb/GAC+Recent+Meetings> and older GAC communiqués are available at: <https://gacweb.icann.org/display/gacweb/GAC+Meetings+Archive>.

### 3. GAC Leadership

The GAC warmly thanks the outgoing Vice-Chairs, Kenya, Singapore, and Sweden and welcomes the incoming Vice-Chairs, Australia, Switzerland and Trinidad & Tobago.

## III. Inter-constituencies Activities

### 1. Meeting with the Accountability and Transparency Review Team 2 (ATRT 2)

The GAC met with the ATRT 2 and received an update on the current activities of the ATRT 2. The exchange served as an information gathering session for the ATRT 2 in order to hear GAC member views on the Review Team processes and areas of interest for governments. The GAC provided input on governmental processes and the challenges and successes that arose during the first round of reviews, and implementation of the GAC related recommendations of the first Accountability and Transparency Review Team.

### 2. Board/GAC Recommendation Implementation Working Group (BGRI-WG)

The Board–GAC Recommendation Implementation Working Group (BGRI–WG) met to discuss further developments on ATRT1 recommendations relating to the GAC, namely recommendations 11 and 12. In the context of Recommendation 11, the GAC and the Board have concluded the discussion and agreed on the details of the consultation process mandated per ICANN Bylaws, should the Board decide not to follow a GAC advice. With respect to Recommendation 12, on GAC Early Engagement, the BGRI-WG had a good exchange with the GNSO on mechanisms for the GAC to be early informed and provide early input to the GNSO PDP. The BGRI–WG intends to continue this discussion intersessionally and at its next meeting in Durban.

### 3. Brand Registry Group

The GAC met with the Brand Registry Group and received information on its origins, values and missions.

### 4. Law Enforcement

The GAC met with law enforcement representatives and received an update from Europol on the Registrar Accreditation Agreement (RAA).

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The GAC warmly thanks the Accountability and Transparency Review Team 2, the Brand Registry Group, Law Enforcement, and the ICANN Board who jointly met with the GAC as well

as all those among the ICANN community who have contributed to the dialogue with the GAC in Beijing.

#### IV. GAC Advice to the ICANN Board<sup>2</sup>

##### 1. New gTLDs

###### a. GAC Objections to Specific Applications

###### i. The GAC Advises the ICANN Board that:

i. The GAC has reached consensus on GAC Objection Advice according to Module 3.1 part I of the Applicant Guidebook on the following applications:<sup>3</sup>

1. The application for .africa (Application number 1-1165-42560)
2. The application for .gcc (application number: 1-1936-2101)

ii. With regard to Module 3.1 part II of the Applicant Guidebook<sup>4</sup>:

1. The GAC recognizes that Religious terms are sensitive issues. Some GAC members have raised sensitivities on the applications that relate to Islamic terms, specifically .islam and .halal. The GAC members concerned have noted that the applications for .islam and .halal lack community involvement and support. It is the view of these GAC members that these applications should not proceed.

###### b. Safeguard Advice for New gTLDs

To reinforce existing processes for raising and addressing concerns the GAC is providing safeguard advice to apply to broad categories of strings (see Annex I).

###### c. Strings for Further GAC Consideration

In addition to this safeguard advice, that GAC has identified certain gTLD strings where further GAC consideration may be warranted, including at the GAC meetings to be held in Durban.

- i. Consequently, **the GAC advises the ICANN Board** to: not proceed beyond Initial Evaluation with the following strings : .shenzhen (IDN in Chinese), .persiangulf, .guangzhou (IDN in Chinese), .amazon (and IDNs in Japanese and Chinese), .patagonia, .date, .spa, .yun, .thai, .zulu, .wine, .vin

<sup>2</sup> To track the history and progress of GAC Advice to the Board, please visit the GAC Advice Online Register available at: <https://gacweb.icann.org/display/gacweb/GAC+Recent+Meetings>

<sup>3</sup> Module 3.1: "The GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved.

<sup>4</sup> Module 3.1: "The GAC advises ICANN that there are concerns about a particular application "dot-example." The ICANN Board is expected to enter into dialogue with the GAC to understand the scope of concerns. The ICANN Board is also expected to provide a rationale for its decision.

**d. The GAC requests:**

- i. a written briefing about the ability of an applicant to change the string applied for in order to address concerns raised by a GAC Member and to identify a mutually acceptable solution.

**e. Community Support for Applications****The GAC advises the Board:**

- i. that in those cases where a community, which is clearly impacted by a set of new gTLD applications in contention, has expressed a collective and clear opinion on those applications, such opinion should be duly taken into account, together with all other relevant information.

**f. Singular and plural versions of the same string as a TLD**

The GAC believes that singular and plural versions of the string as a TLD could lead to potential consumer confusion.

**Therefore the GAC advises the ICANN Board to:**

- i. Reconsider its decision to allow singular and plural versions of the same strings.

**g. Protections for Intergovernmental Organisations**

The GAC stresses that the IGOs perform an important global public mission with public funds, they are the creations of government under international law, and their names and acronyms warrant special protection in an expanded DNS. Such protection, which the GAC has previously advised, should be a priority.

This recognizes that IGOs are in an objectively different category to other rights holders, warranting special protection by ICANN in the DNS, while also preserving sufficient flexibility for workable implementation.

The GAC is mindful of outstanding implementation issues and commits to actively working with IGOs, the Board, and ICANN Staff to find a workable and timely way forward.

Pending the resolution of these implementation issues, the **GAC reiterates its advice to the ICANN Board that:**

- i. appropriate preventative initial protection for the IGO names and acronyms on the provided list be in place before any new gTLDs would launch.

## **2. Registrar Accreditation Agreement (RAA)**

Consistent with previous communications to the ICANN Board

### **a. the GAC advises the ICANN Board that:**

- i. the 2013 Registrar Accreditation Agreement should be finalized before any new gTLD contracts are approved.

The GAC also strongly supports the amendment to the new gTLD registry agreement that would require new gTLD registry operators to use only those registrars that have signed the 2013 RAA.

The GAC appreciates the improvements to the RAA that incorporate the 2009 GAC-Law Enforcement Recommendations.

The GAC is also pleased with the progress on providing verification and improving accuracy of registrant data and supports continuing efforts to identify preventative mechanisms that help deter criminal or other illegal activity. Furthermore the GAC urges all stakeholders to accelerate the implementation of accreditation programs for privacy and proxy services for WHOIS.

## **3. WHOIS**

### **The GAC urges the ICANN Board to:**

- a. ensure that the GAC Principles Regarding gTLD WHOIS Services, approved in 2007, are duly taken into account by the recently established Directory Services Expert Working Group.

The GAC stands ready to respond to any questions with regard to the GAC Principles.

The GAC also expects its views to be incorporated into whatever subsequent policy development process might be initiated once the Expert Working Group concludes its efforts.

## **4. International Olympic Committee and Red Cross /Red Crescent**

Consistent with its previous communications, **the GAC advises the ICANN Board to:**

- a. amend the provisions in the new gTLD Registry Agreement pertaining to the IOC/RCRC names to confirm that the protections will be made permanent prior to the delegation of any new gTLDs.

## **5. Public Interest Commitments Specifications**

### **The GAC requests:**

- b. more information on the Public Interest Commitments Specifications on the basis of the questions listed in annex II.

## **V. Next Meeting**

The GAC will meet during the period of the 47<sup>th</sup> ICANN meeting in Durban, South Africa.

## ANNEX I

### Safeguards on New gTLDs

The GAC considers that Safeguards should apply to broad categories of strings. For clarity, this means any application for a relevant string in the current or future rounds, in all languages applied for.

The GAC advises the Board that all safeguards highlighted in this document as well as any other safeguard requested by the ICANN Board and/or implemented by the new gTLD registry and registrars should:

- be implemented in a manner that is fully respectful of human rights and fundamental freedoms as enshrined in international and, as appropriate, regional declarations, conventions, treaties and other legal instruments – including, but not limited to, the UN Universal Declaration of Human Rights.
- respect all substantive and procedural laws under the applicable jurisdictions.
- be operated in an open manner consistent with general principles of openness and non-discrimination.

#### Safeguards Applicable to all New gTLDs

**The GAC Advises that** the following six safeguards should apply to all new gTLDs and be subject to contractual oversight.

1. **WHOIS verification and checks** —Registry operators will conduct checks on a statistically significant basis to identify registrations in its gTLD with deliberately false, inaccurate or incomplete WHOIS data at least twice a year. Registry operators will weight the sample towards registrars with the highest percentages of deliberately false, inaccurate or incomplete records in the previous checks. Registry operators will notify the relevant registrar of any inaccurate or incomplete records identified during the checks, triggering the registrar’s obligation to solicit accurate and complete information from the registrant.
2. **Mitigating abusive activity**—Registry operators will ensure that terms of use for registrants include prohibitions against the distribution of malware, operation of botnets, phishing, piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or otherwise engaging in activity contrary to applicable law.
3. **Security checks**— While respecting privacy and confidentiality, Registry operators will periodically conduct a technical analysis to assess whether domains in its gTLD are being used to perpetrate security threats, such as pharming, phishing, malware, and botnets. If Registry operator identifies security risks that pose an actual risk of harm, Registry operator will notify the relevant registrar and, if the registrar does not take immediate action, suspend the domain name until the matter is resolved.

4. **Documentation**—Registry operators will maintain statistical reports that provide the number of inaccurate WHOIS records or security threats identified and actions taken as a result of its periodic WHOIS and security checks. Registry operators will maintain these reports for the agreed contracted period and provide them to ICANN upon request in connection with contractual obligations.
5. **Making and Handling Complaints** – Registry operators will ensure that there is a mechanism for making complaints to the registry operator that the WHOIS information is inaccurate or that the domain name registration is being used to facilitate or promote malware, operation of botnets, phishing, piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or otherwise engaging in activity contrary to applicable law.
6. **Consequences** – Consistent with applicable law and any related procedures, registry operators shall ensure that there are real and immediate consequences for the demonstrated provision of false WHOIS information and violations of the requirement that the domain name should not be used in breach of applicable law; these consequences should include suspension of the domain name.

The following safeguards are intended to apply to particular categories of new gTLDs as detailed below.

### Category 1

#### Consumer Protection, Sensitive Strings, and Regulated Markets:

##### **The GAC Advises the ICANN Board:**

- Strings that are linked to regulated or professional sectors should operate in a way that is consistent with applicable laws. These strings are likely to invoke a level of implied trust from consumers, and carry higher levels of risk associated with consumer harm. The following safeguards should apply to strings that are related to these sectors:
  1. Registry operators will include in its acceptable use policy that registrants comply with all applicable laws, including those that relate to privacy, data collection, consumer protection (including in relation to misleading and deceptive conduct), fair lending, debt collection, organic farming, disclosure of data, and financial disclosures.
  2. Registry operators will require registrars at the time of registration to notify registrants of this requirement.
  3. Registry operators will require that registrants who collect and maintain sensitive health and financial data implement reasonable and appropriate security measures commensurate with the offering of those services, as defined by applicable law and recognized industry standards.
  4. Establish a working relationship with the relevant regulatory, or industry self-regulatory, bodies, including developing a strategy to mitigate as much as possible the risks of fraudulent, and other illegal, activities.

5. Registrants must be required by the registry operators to notify to them a single point of contact which must be kept up-to-date, for the notification of complaints or reports of registration abuse, as well as the contact details of the relevant regulatory, or industry self-regulatory, bodies in their main place of business.

In the current round the GAC has identified the following non-exhaustive list of strings that the above safeguards should apply to:

- **Children:**
  - .kid, .kids, .kinder, .game, .games, .juegos, .play, .school, .schule, .toys
- **Environmental:**
  - .earth, .eco, .green, .bio, .organic
- **Health and Fitness:**
  - .care, .diet, .fit, .fitness, .health, .healthcare, .heart, .hiv, .hospital,, .med, .medical, .organic, .pharmacy, .rehab, .surgery, .clinic, .healthy (IDN Chinese equivalent), .dental, .dentist .doctor, .dds, .physio
- **Financial:**
  - capital, . cash, .cashbackbonus, .broker, .brokers, .claims, .exchange, .finance, .financial, .fianancialaid, .forex, .fund, .investments, .lease, .loan, .loans, .market, . markets, .money, .pay, .payu, .retirement, .save, .trading, .autoinsurance, .bank, .banque, .carinsurance, .credit, .creditcard, .creditunion,.insurance, .insure, ira, .lifeinsurance, .mortgage, .mutualfunds, .mutuelle, .netbank, .reit, .tax, .travelersinsurance, .vermogensberater, .vermogensberatung and .vesicherung.
- **Gambling:**
  - .bet, .bingo, .lotto, .poker, and .spreadbetting, .casino
- **Charity:**
  - .care, .gives, .giving, .charity (and IDN Chinese equivalent)
- **Education:**
  - degree, .mba, .university
- **Intellectual Property**
  - .audio, .book (and IDN equivalent), .broadway, .film, .game, .games, .juegos, .movie, .music, .software, .song, .tunes, .fashion (and IDN equivalent), .video, .app, .art, .author, .band, .beats, .cloud (and IDN equivalent), .data, .design, .digital, .download, .entertainment, .fan, .fans, .free, .gratis, .discount, .sale, .hiphop, .media, .news, .online, .pictures, .radio, .rip, .show, .theater, .theatre, .tour, .tours, .tvs, .video, .zip
- **Professional Services:**
  - .abogado, .accountant, .accountants, .architect, .associates, .attorney, .broker, .brokers, .cpa, .doctor, .dentist, .dds, .engineer, .lawyer, .legal, .realtor, .realty, .vet
- **Corporate Identifiers:**
  - .corp, .gmbh, .inc, .limited, .llc, .llp, .ltda, .ltd, .sarl, .srl, .sal
- **Generic Geographic Terms:**
  - .town, .city, .capital

- .reise, .reisen<sup>5</sup>
- .weather
- .engineering
- .law
- **Inherently Governmental Functions**
  - .army, .navy, .airforce
- In addition, applicants for the following strings should develop clear policies and processes to minimise the risk of cyber bullying/harassment
  - .fail, .gripe, .sucks, .wtf

**The GAC further advises the Board:**

1. In addition, some of the above strings may require further targeted safeguards, to address specific risks, and to bring registry policies in line with arrangements in place offline. In particular, a limited subset of the above strings are associated with market sectors which have clear and/or regulated entry requirements (such as: financial, gambling, professional services, environmental, health and fitness, corporate identifiers, and charity) in multiple jurisdictions, and the additional safeguards below should apply to some of the strings in those sectors:
  6. At the time of registration, the registry operator must verify and validate the registrants' authorisations, charters, licenses and/or other related credentials for participation in that sector.
  7. In case of doubt with regard to the authenticity of licenses or credentials, Registry Operators should consult with relevant national supervisory authorities, or their equivalents.
  8. The registry operator must conduct periodic post-registration checks to ensure registrants' validity and compliance with the above requirements in order to ensure they continue to conform to appropriate regulations and licensing requirements and generally conduct their activities in the interests of the consumers they serve.

**Category 2**

**Restricted Registration Policies**

**The GAC advises the ICANN Board:**

1. **Restricted Access**
  - As an exception to the general rule that the gTLD domain name space is operated in an open manner registration may be restricted, in particular for strings mentioned under category 1

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<sup>5</sup> Austria, Germany, and Switzerland support requirements for registry operators to develop registration policies that allow only travel-related entities to register domain names. Second Level Domains should have a connection to travel industries and/or its customers

above. In these cases, the registration restrictions should be appropriate for the types of risks associated with the TLD. The registry operator should administer access in these kinds of registries in a transparent way that does not give an undue preference to any registrars or registrants, including itself, and shall not subject registrars or registrants to an undue disadvantage.

## 2. Exclusive Access

- For strings representing generic terms, exclusive registry access should serve a public interest goal.
  
- In the current round, the GAC has identified the following non-exhaustive list of strings that it considers to be generic terms, where the applicant is currently proposing to provide exclusive registry access
  - .antivirus, .app, .autoinsurance, .baby, .beauty, .blog, .book, .broker, .carinsurance, .cars, .cloud, .courses, .cpa, .cruise, .data, .dvr, .financialaid, .flowers, .food, .game, .grocery, .hair, .hotel, .hotels, .insurance, .jewelry, .mail, .makeup, .map, .mobile, .motorcycles, .movie, .music, .news, .phone, .salon, .search, .shop, .show, .skin, .song, .store, .tennis, .theater, .theatre, .tires, .tunes, .video, .watches, .weather, .yachts, .クラウド [cloud], .ストア [store], .セール [sale], .ファッション [fashion], .家電 [consumer electronics], .手表 [watches], .書籍 [book], .珠宝 [jewelry], .通販 [online shopping], .食品 [food]

**ANNEX II****List of questions related to Public Interest Commitments Specifications**

1. Could a third party intervene or object if it thinks that a public interest commitment is not being followed? Will governments be able to raise those sorts of concerns on behalf of their constituents?
2. If an applicant does submit a public interest commitment and it is accepted are they able to later amend it? And if so, is there a process for that?
3. What are ICANN's intentions with regard to maximizing awareness by registry operators of their commitments?
4. Will there be requirements on the operators to maximize the visibility of these commitments so that stakeholders, including governments, can quickly determine what commitments were made?
5. How can we follow up a situation where an operator has not made any commitments? What is the process for amending that situation?
6. Are the commitments enforceable, especially later changes? Are they then going into any contract compliance?
7. How will ICANN decide whether to follow the sanctions recommended by the PIC DRP? Will there be clear and transparent criteria? Based on other Dispute Resolution Procedures what is the expected fee level?
8. If serious damage has been a result of the past registration policy, will there be measures to remediate the harm?

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**RESPONDENT'S EXHIBIT**

**ANNEX 1 to NGPC Resolution No. 2013.06.04.NG01**

**NGPC Scorecard of 1As Regarding Non-Safeguard Advice in the GAC Beijing Communiqué**

**4 June 2013**

This document contains the NGPC's response to the GAC Beijing Communiqué issued 11 April 2013 <<http://www.icann.org/en/news/correspondence/gac-to-board-11apr13-en>> for the non-safeguard advice items in the GAC Register of Advice where the NGPC has adopted a score of "1A" to indicate that its position is consistent with the GAC advice as described in the Scorecard. Refer to the GAC Register of Advice for the full text of each item of advice in the GAC Beijing Communiqué <<https://gacweb.icann.org/display/GACADV/GAC+Register+of+Advice>>.

GAC Register #	Summary of GAC Advice		NGPC Response
<p>1. 2013-04-11-Obj-Africa (Communiqué §1.a.i.1)</p>	<p>The GAC Advises the ICANN Board that the GAC has reached consensus on GAC Objection Advice according to Module 3.1 part I of the Applicant Guidebook on the following application: .africa (Application number 1-1165-42560)</p>	<p>1A</p>	<p>The NGPC accepts this advice. The AGB provides that if "GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved." (AGB § 3.1) The NGPC directs staff that pursuant to the GAC advice and Section 3.1 of the Applicant Guidebook, Application number 1-1165-42560 for .africa will not be approved. In accordance with the AGB the applicant may withdraw (pursuant to AGB § 1.5.1) or seek relief according to ICANN's accountability mechanisms (see ICANN Bylaws, Articles IV and V) subject to the appropriate standing and procedural requirements.</p>
<p>2. 2013-04-11-Obj-GCC (Communiqué §1.a.i.2)</p>	<p>The GAC Advises the ICANN Board that the GAC has reached consensus on GAC Objection Advice according to Module 3.1 part I of the Applicant Guidebook on the following application: .gcc (application number: 1-1936-2101)</p>	<p>1A</p>	<p>The NGPC accepts this advice. The AGB provides that if "GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved." (AGB § 3.1) The NGPC directs staff that pursuant to the GAC advice and Section 3.1 of the Applicant Guidebook, Application number 1-1936-2101 for .gcc will not be approved. In accordance with the AGB the applicant may withdraw (pursuant to AGB § 1.5.1) or seek relief according to ICANN's accountability mechanisms (see ICANN Bylaws, Articles IV and V) subject to the appropriate standing and procedural requirements.</p>

<b>GAC Register #</b>	<b>Summary of GAC Advice</b>		<b>NGPC Response</b>
<p>3. 2103-04-11- Religious Terms (Communiqué §1.a.ii)</p>	<p>The GAC Advises the Board that with regard to Module 3.1 part II of the Applicant Guidebook, the GAC recognizes that Religious terms are sensitive issues. Some GAC members have raised sensitivities on the applications that relate to Islamic terms, specifically .islam and .halal. The GAC members concerned have noted that the applications for .islam and .halal lack community involvement and support. It is the view of these GAC members that these applications should not proceed.</p>	<p>1A</p>	<p>The NGPC accepts this advice. The AGB provides that if "GAC advises ICANN that there are concerns about a particular application 'dot-example,' the ICANN Board is expected to enter into dialogue with the GAC to understand the scope of concerns." Pursuant to Section 3.1.ii of the AGB, the NGPC stands ready to enter into dialogue with the GAC on this matter. We look forward to liaising with the GAC as to how such dialogue should be conducted.</p> <p>(Note a community objection has been filed with the International Centre for Expertise of the ICC against .ISLAM and .HALAL. Because formal objections have been filed, these applications cannot move to the contracting phase until the objections are resolved.)</p>

GAC Register #	Summary of GAC Advice		NGPC Response
4. 2013-04-11-gTLDStrings (Communiqué §1.c)	In addition to this safeguard advice, the GAC has identified certain gTLD strings where further GAC consideration may be warranted, including at the GAC meetings to be held in Durban. Consequently, the GAC advises the ICANN Board to not proceed beyond Initial Evaluation with the following strings : .shenzhen (IDN in Chinese), .persiangulf, .guangzhou (IDN in Chinese), .amazon (and IDNs in Japanese and Chinese), .patagonia, .date, .spa, .yun, .thai, .zulu, .wine, .vin	1A	<p>The NGPC accepts this advice. The AGB provides that "GAC advice will not toll the processing of any application (i.e., an application will not be suspended but will continue through the stages of the application process)" (AGB § 3.1). At this time, ICANN will not proceed beyond initial evaluation of these identified strings. In other words, ICANN will allow evaluation and dispute resolution processes to go forward, but will not enter into registry agreements with applicants for the identified strings for now.</p> <p>(Note: community objections have been filed with the International Centre for Expertise of the ICC against .PERSIANGULF, .AMAZON, and .PATAGONIA. The application for .ZULU was withdrawn.)</p>
5. 2013-04-11-CommunitySupport (Communiqué §1.e)	The GAC advises the Board that in those cases where a community, which is clearly impacted by a set of new gTLD applications in contention, has expressed a collective and clear opinion on those applications, such opinion should be duly taken into account, together with all other relevant information.	1A	The NGPC accepts this advice. Criterion 4 for the Community Priority Evaluation process takes into account "community support and/or opposition to the application" in determining whether to award priority to a community application in a contention set. (Note however that if a contention set is not resolved by the applicants or through a community priority evaluation then ICANN will utilize an auction as the objective method for resolving the contention.)

<b>GAC Register #</b>	<b>Summary of GAC Advice</b>		<b>NGPC Response</b>
6. 2013-04-11-PluralStrings (Communiqué §1.f)	The GAC believes that singular and plural versions of the string as a TLD could lead to potential consumer confusion. Therefore the GAC advises the Board to reconsider its decision to allow singular and plural versions of the same strings.	1A	The NGPC accepts this advice and will consider whether to allow singular and plural versions of the same string.
7. 2013-04-11-RAA (Communiqué §2)	The GAC advises the ICANN Board that the 2013 Registrar Accreditation Agreement should be finalized before any new gTLD contracts are approved.	1A	The NGPC accepts this advice. The final draft of the RAA was posted for public comment on 22 April 2013. The new gTLD Registry Agreement was posted for public comment on 29 April 2013, and it requires all new gTLD registries to only use 2013 RAA registrars. The public comment reply period for the 2013 RAA closes on 4 June 2013. The NGPC intends to consider the 2013 RAA shortly thereafter.
8. 2013-04-11-WHOIS (Communiqué §3)	The GAC urges the ICANN Board to ensure that the GAC Principles Regarding gTLD WHOIS Services, approved in 2007, are duly taken into account by the recently established Directory Services Expert Working Group.	1A	The NGPC accepts this advice. The NGPC notes that staff has confirmed that the GAC Principles have been shared with the Expert Working Group.

<b>GAC Register #</b>	<b>Summary of GAC Advice</b>		<b>NGPC Response</b>
<p>9. 2013-04-11-IOCRC (Communiqué §4)</p>	<p>The GAC advises the ICANN Board to amend the provisions in the new gTLD Registry Agreement pertaining to the IOC/RCRC names to confirm that the protections will be made permanent prior to the delegation of any new gTLDs.</p>	<p>1A</p>	<p>The NGPC accepts the GAC advice. The proposed final version of the Registry Agreement posted for public comment on 29 April 2013 includes protection for an indefinite duration for IOC/RCRC names. Specification 5 of this version of the Registry Agreement includes a list of names (provided by the IOC and RCRC Movement) that "shall be withheld from registration or allocated to Registry Operator at the second level within the TLD."</p> <p>This protection was added pursuant to a NGPC resolution to maintain these protections "until such time as a policy is adopted that may require further action" (204.11.26.NG03). The resolution recognized the GNSO's initiation of an expedited PDP. Until such time as the GNSO approves recommendations in the PDP and the Board adopts them, the NGPC's resolutions protecting IOC/RCRC names will remain in place. Should the GNSO submit any recommendations on this topic, the NGPC will confer with the GAC prior to taking action on any such recommendations.</p>

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RESPONDENT'S EXHIBIT

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## Resources

 About ICANN Board Accountability Governance Groups

## Business

 Contractual  
Compliance Registrars RegistriesOperational  
Metrics Identifier  
Systems  
Security,  
Stability and  
Resiliency (IS-  
SSR) ccTLDs Internationalized  
Domain Names Universal  
Acceptance  
InitiativeApproved Resolution | Meeting of the New  
gTLD Program Committee

04 Jun 2013

1. **Main Agenda**

- a. **Consideration of Non-Safeguard Advice in the GAC's Beijing Communiqué**  
Rationale for Resolution 2013.06.04.NG01

## 1. Main Agenda:

- a. **Consideration of Non-Safeguard Advice in the GAC's Beijing Communiqué**

Whereas, the GAC met during the ICANN 46 meeting in Beijing and issued a Communiqué on 11 April 2013 ("Beijing Communiqué");

Whereas, on 18 April 2013, ICANN posted the Beijing Communiqué and officially notified applicants of the advice, <http://newgtlds.icann.org/en/announcements-and-media/announcement-18apr13-en> triggering the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1;

Whereas, the NGPC met on 8 May 2013 to consider a plan for responding to the GAC's advice on the New gTLD Program, transmitted to the Board through its Beijing Communiqué;

Whereas, the NGPC met on 18 May 2013 to further discuss and consider its plan for responding the GAC's advice in the Beijing Communiqué on the New gTLD Program;

Whereas, the NGPC has considered the applicant responses

- Policy

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- Public Comment

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- Technical Functions

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- Contact

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- Help

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submitted during the 21- day applicant response period, and the NGPC has identified nine (9) items of advice in the attached scorecard where its position is consistent with the GAC's advice in the Beijing Communiqué.

Whereas, the NGPC developed a scorecard to respond to the GAC's advice in the Beijing Communiqué similar to the one used during the GAC and Board meetings in Brussels on 28 February and 1 March 2011, and has identified where the NGPC's position is consistent with GAC advice, noting those as "1A" items.

Whereas, the NGPC is undertaking this action pursuant to the authority granted to it by the Board on 10 April 2012, to exercise the ICANN Board's authority for any and all issues that may arise relating to the New gTLD Program.

Resolved (2013.06.04.NG01), the NGPC adopts the "NGPC Scorecard of 1As Regarding Non-Safeguard Advice in the GAC Beijing Communiqué" (4 June 2013), attached as [Annex 1](#) [PDF, 564 KB] to this Resolution, in response to the items of GAC advice in the Beijing Communiqué as presented in the scorecard.

## Rationale for Resolution 2013.06.04.NG01

### Why the NGPC is addressing the issue?

Article XI, Section 2.1 of the ICANN Bylaws <http://www.icann.org/en/about/governance/bylaws#XI> permit the GAC to "put issues to the Board directly, either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision to existing policies." The GAC issued advice to the Board on the New gTLD Program through its Beijing Communiqué dated 11 April 2013. The ICANN Bylaws require the Board to take into account the GAC's advice on public policy matters in the formulation and adoption of the polices. If the Board decides to take an action that is not consistent with the GAC advice, it must inform the GAC and state the reasons why it decided not to follow the advice. The Board and the GAC will then try in good faith to find a mutually acceptable solution. If no solution can be found, the Board will state in its final decision why the GAC advice was not followed.

**What is the proposal being considered?**

The NGPC is being asked to consider accepting a discrete grouping of the GAC advice as described in the attached NGPC Scorecard of 1As Regarding Non-Safeguard Advice in the GAC Beijing Communiqué (4 June 2013), which includes nine (9) items of non- safeguard advice from the Beijing Communiqué as listed in the GAC Register of Advice. These items are those for which the NGPC has a position that is consistent with the GAC's advice.

**Which stakeholders or others were consulted?**

On 18 April 2013, ICANN posted the GAC advice and officially notified applicants of the advice, <http://newgtlds.icann.org/en/announcements-and-media/announcement-18apr13-en> triggering the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1 <http://newgtlds.icann.org/en/applicants/gac-advice-responses>. The NGPC has considered the applicant responses in formulating its response to the GAC advice as applicable.

To note, on 23 April 2013, ICANN initiated a public comment forum to solicit input on how the NGPC should address GAC advice regarding safeguards applicable to broad categories of new gTLD strings <http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm>. The public comment forum on how the NGPC should address GAC advice regarding safeguards is open through 4 June 2013. These comments will serve as important inputs to the NGPC's future consideration of the other elements of GAC advice not being considered at this time in the attached scorecard.

**What concerns or issues were raised by the community?**

As part of the 21-day applicant response period, ICANN received 383 applicant response documents representing 745 unique applications. Twenty-three responses were withdrawn and eleven were submitted after the deadline. Applicants appear to generally support the spirit of the GAC advice. The responses expressed concerns that the advice was too broad in its reach and did not take into account individual applications. Some applicant responses expressed concern that some elements of the advice seem to circumvent the bottom-up,

multi-stakeholder model, while others proposed that the NGPC reject specific elements of the advice. A review of the comments has been provided to the NGPC under separate cover. The complete set of applicant responses can be reviewed at: <http://newgtlds.icann.org/en/applicants/gac-advice-responses>.

### **What significant materials did the Board review?**

As part of its deliberations, the NGPC reviewed the following materials and documents:

- GAC Beijing Communiqué:  
<http://www.icann.org/en/news/correspondence/gac-to-board-18apr13-en.pdf> [PDF, 156 KB]
- Applicant responses to GAC advice:  
<http://newgtlds.icann.org/en/applicants/gac-advice-responses>
- Applicant Guidebook, Module 3:  
<http://newgtlds.icann.org/en/applicants/agb/objection-procedures-04jun12-en.pdf> [PDF, 261 KB]

### **What factors did the Board find to be significant?**

The Beijing Communiqué generated significant interest from applicants and resulted in many comments. The NGPC considered the applicant comments, the GAC's advice transmitted in the Beijing Communiqué, and the procedures established in the AGB.

### **Are there positive or negative community impacts?**

The adoption of the GAC advice as provided in the attached scorecard will assist with resolving the GAC advice in manner that permits the greatest number of new gTLD applications to continue to move forward as soon as possible.

### **Are there fiscal impacts or ramifications on ICANN (strategic plan, operating plan, budget); the community; and/or the public?**

There are no foreseen fiscal impacts associated with the adoption of this resolution.

**Are there any security, stability or resiliency issues relating to the DNS?**

Approval of the proposed resolution will not impact security, stability or resiliency issues relating to the DNS.

**Is this either a defined policy process within ICANN's Supporting Organizations or ICANN's Organizational Administrative Function decision requiring public comment or not requiring public comment?**

ICANN posted the GAC advice and officially notified applicants of the advice on 18 April 2013 <http://newgtlds.icann.org/en/announcements-and-media/announcement-18apr13-en>. This triggered the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1.

Published on 6 June 2013

  
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<p><b>Who We Are</b></p> <ul style="list-style-type: none"> <li>Get Started</li> <li>Learning</li> <li>Participate</li> <li>Groups</li> </ul>	<p><b>Contact Us</b></p> <ul style="list-style-type: none"> <li>Offices</li> <li>Global Support</li> <li>Security Team</li> <li>PGP Keys</li> </ul>	<p><b>Accountability &amp; Transparency</b></p> <ul style="list-style-type: none"> <li>Accountability Mechanisms</li> <li>Independent Review</li> </ul>	<p><b>Governance</b></p> <ul style="list-style-type: none"> <li>Documents</li> <li>Agreements</li> <li>AOC Review</li> <li>Annual Report</li> </ul>	<p><b>Help</b></p> <ul style="list-style-type: none"> <li>Dispute Resolution</li> <li>Domain Name Dispute Resolution</li> </ul>
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Board	Certificate Authority	Process	Financials	Name Collision
President's Corner	Registry Liaison	Request for Reconsideration	Document Disclosure	Registrar Problems
Staff	AOC Review	Ombudsman	Planning	WHOIS
Careers	Organizational Reviews		Dashboard Beta	
Newsletter	Request a Speaker		RFPs	
Development and Public Responsibility	For Journalists		Litigation	
			Correspondence	

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**RESPONDENT'S EXHIBIT**



## Governmental Advisory Committee

Durban, 18 July 2013

### **GAC Communiqué – Durban, South Africa<sup>1</sup>**

#### **I. Introduction**

The Governmental Advisory Committee (GAC) of the Internet Corporation for Assigned Names and Numbers (ICANN) met in Durban, South Africa during the week of 13 July 2013. 59 GAC Members and 4 Observers attended the meetings. The GAC expresses warm thanks to the local host, .zadna, for their support.

#### **II. Inter-constituency Activities**

##### **1. Briefing from the Geo TLD Registry Group**

The GAC met with the Geo TLD Registry Group and received information on the organization's origins, values, missions and current concerns.

##### **2. Meeting with the Accountability and Transparency Review Team 2 (ATRT 2)**

The GAC met with the ATRT 2 and discussed expectations and priorities. The GAC encouraged the ATRT2 to give advice on improving the accountability and transparency in ICANN's financial operations reporting. The ATRT2 was invited to advise on how to improve outreach and active participation, especially from developing countries. Broad participation of stakeholders from all regions is vital for the legitimacy of ICANN and the multi-stakeholder model. The GAC also invited the ATRT2 to give advice on how to improve the GAC and the transparency of GAC meetings, and to better explain and provide rationales for the advice of the GAC. The ATRT2 invited individual GAC members to provide further written inputs to the Review Team.

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<sup>1</sup> To access previous GAC advice, whether on the same or other topics, past GAC communiqués are available at: <https://gacweb.icann.org/display/gacweb/GAC+Recent+Meetings> and older GAC communiqués are available at: <https://gacweb.icann.org/display/gacweb/GAC+Meetings+Archive>.

**3. Meeting with the Generic Names Supporting Organization (GNSO)**

The GAC met with the GNSO and exchanged views on key policy development work in the GNSO, including an ongoing Policy Development Process (PDP) regarding protection of IGO and INGO names and acronyms. An exchange focused on the opportunities for the GAC to engage early in GNSO Policy Development Processes.

**4. Meeting with the Security and Stability Advisory Committee (SSAC)**

The GAC met with the SSAC and received an update on recent SSAC work regarding namespace collisions, internal name certificates and dotless domains, and exchanged views on ensuing concerns.

**5. Meeting with the Country Code Names Supporting Organization (ccNSO)**

The GAC met with the ccNSO and received information about the recently concluded policy development regarding IDN ccTLDs, the modification of the IDN Fast Track process with creation of a second panel and the Framework of Interpretation work. The GAC and the ccNSO also discussed how to further improve the future dialogue between the GAC and the ccNSO.

**6. Meeting with the At-Large Advisory Committee (ALAC)**

The GAC met with the ALAC and received an introduction to ALAC's organization, bottom-up processes and output, including formal ALAC objections to certain new gTLD applications. The ALAC voiced concerns regarding issues on dot-less domains and domain name collisions and expressed support for recent SSAC statements. The ALAC also expressed concerns over the high threshold in the dispute resolution procedure for Public Interest Commitments (PIC) in particular in relation to the measurable harm standard required to file a complaint and the enforcement of these.

**7. Briefing from the Domain Name Association (DNA)**

The GAC met with the Domain Name Association and received information on its structure and objectives.

**8. Meeting with the Expert Working Group on gTLD Directory Services (EWG)**

The GAC met with the EWG and exchanged views on the model proposed by the EWG for the next generation directory service as a successor to the WHOIS service.

The GAC referenced its WHOIS principles from 2007 and its Beijing advice regarding the WHOIS Review Team recommendations, which both have served as input for the work of the EWG. The GAC expressed its concerns about the risks associated with centralized storage of data in one repository in one jurisdiction, and raised a series of issues relating to the proposed data repository structure and access including security, data accuracy, consistency with national law, accreditation of database users, and privacy governance. The GAC looks forward to further discussion of these issues as the working group progresses.

## 9. Briefing from Architelos

The GAC received a briefing on the TLD market and its development from Architelos, a consultancy focused on the domain name industry.

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The GAC warmly thanks the GNSO, the SSAC, the ccNSO and the ALAC, as well as all those among the ICANN community who have contributed to the dialogue with the GAC in Durban.

## III. Internal Matters

1. The GAC held its second capacity building session for new and existing members on 13 July, which included an update to the GAC on internationalization and the ICANN's strategy for engagement in the Africa region.
2. The GAC welcomed Madagascar, Namibia, São Tomé and Príncipe, Swaziland, and Zambia to the GAC as members.
3. The chair and vice chairs provided an update in Durban on progress with regard to ACIG providing secretariat support to the GAC.

## IV. GAC Advice to the Board<sup>2</sup>

### 1. New gTLDs

#### 1. GAC Objections to Specific Applications (ref. Beijing Communiqué 1.c.)

##### a. The GAC Advises the ICANN Board that:

- i. The GAC has reached consensus on GAC Objection Advice according to Module 3.1 part I of the Applicant Guidebook on the following applications:<sup>3</sup>

<sup>2</sup> To track the history and progress of GAC Advice to the Board, please visit the GAC Advice Online Register available at: <https://gacweb.icann.org/display/GACADV/GAC+Register+of+Advice>

<sup>3</sup> Module 3.1: "The GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved.

1. The application for .amazon (application number 1-1315-58086) and related IDNs in Japanese (application number 1-1318-83995) and Chinese (application number 1-1318-5591)
2. The application for .thai (application number 1-2112-4478)

**b. guangzhou (IDN in Chinese), shenzhen (IDN in Chinese), .spa and .yun**

- i. The GAC agrees to leave the applications below for further consideration and **advises the ICANN Board**:
  - i. Not to proceed beyond initial evaluation until the agreements between the relevant parties are reached.
    1. The applications for .spa (application number 1-1309-12524 and 1-1619-92115)
    2. The application for .yun (application number 1-1318-12524)
    3. The application for .guangzhou (IDN in Chinese - application number 1-1121-22691)
    4. The application for .shenzhen (IDN in Chinese - application number 1-1121-82863)

**2. .wine and .vin (ref. Beijing Communiqué 1.c.)**

- a. **The GAC advises the ICANN Board that:**
  - i. The GAC considered the two strings .vin and .wine and due to the complexity of the matter was unable to conclude at this meeting. As a result the GAC agreed to take thirty days additional time with a view to conclude on the matter.

**3. .date and .persiangulf (ref. Beijing Communiqué 1.c.)**

- a. **The GAC has finalised its consideration of the following strings, and does not object to them proceeding:**
  - i. .date (application number 1-1247-30301)
  - ii. .persiangulf (application number 1-2128-55439)

**4. .indians and .ram**

- a. **The GAC Advises the ICANN Board that:**
  - i. The GAC has noted the concerns expressed by the Government of India not to proceed with the applications for .indians and .ram.

**5. Protection of IGO Acronyms**

- a. The GAC reaffirms its previous advice from the Toronto and Beijing Meetings that IGOs are in an objectively different category to other rights holders thus warranting special protection by ICANN. IGOs perform important global public missions with public funds and as such, their identifiers (both their names and their acronyms) need preventative protection in an expanded DNS.
- b. The GAC understands that the ICANN Board, further to its previous assurances, is prepared to fully implement GAC advice; an outstanding matter to be finalized is the practical and effective implementation of the permanent preventative protection of IGO acronyms at the second level.
- c. **The GAC advises the ICANN Board that:**
  - i. The GAC is interested to work with the IGOs and the NGPC on a complementary cost-neutral mechanism that would:
    - a. provide notification to an IGO if a potential registrant seeks to register a domain name matching the acronym of an IGO at the second level, giving the IGO a reasonable opportunity to express concerns, if any; and
    - b. allow for an independent third party to review any such registration request, in the event of a disagreement between an IGO and potential registrant.
  - ii. The initial protections for IGO acronyms confirmed by the NGPC at its meeting of 2 July 2013 should remain in place until the dialogue between the GAC, NGPC, and IGO representatives ensuring the implementation of preventative protection for IGO acronyms at the second level is completed.

## **5. Protection of Red Cross/Red Crescent Acronyms**

- a. **The GAC advises the ICANN Board that**
  - i. The same complementary cost neutral mechanisms to be worked out (as above in 4.c.i.) for the protection of acronyms of IGOs be used to also protect the acronyms of the International Committee

of the Red Cross (ICRC/CICR) and the International Federation of Red Cross and Red Crescent Societies (IFRC/FICR).

## 6. Category 1 Safeguard Advice

- i. The GAC has met with the NGPC to discuss the Committee's response to GAC advice contained in the Beijing Communique on safeguards that should apply to Category 1 new gTLDs. **The GAC Advises the ICANN Board that:**
  - 1. The GAC will continue the dialogue with the NGPC on this issue.

## 7. Geographic Names and Community Applications

### a. Geographic Names

- i. The GAC recommends that ICANN collaborate with the GAC in refining, for future rounds, the Applicant Guidebook with regard to the protection of terms with national, cultural, geographic and religious significance, in accordance with the 2007 GAC Principles on New gTLDs.

### b. Community Applications

- i. The GAC reiterates its advice from the Beijing Communique regarding preferential treatment for all applications which have demonstrable community support, while noting community concerns over the high costs for pursuing a Community Objection process as well as over the high threshold for passing Community Priority Evaluation.
- ii. **Therefore the GAC advises the ICANN Board to:**
  - a. Consider to take better account of community views, and improve outcomes for communities, within the existing framework, independent of whether those communities have utilized ICANN's formal community processes to date.

## 8. DNS Security and Stability

- a. The GAC shares the security and stability concerns expressed by the SSAC regarding Internal Name Certificates and Dotless Domains. The GAC requests the ICANN Board to provide a written briefing about:
  - i. how ICANN considers this SSAC advice with a view to implementation as soon as possible. The GAC believes that all such stability and security analysis should be made publicly available prior to the delegation of new gTLDs.
  - ii. **The GAC Advises the ICANN Board to:**

- a. As a matter of urgency consider the recommendations contained in the SSAC Report on Dotless Domains (SAC053) and Internal Name Certificates (SAC057).

**9. Registry and Registrar Agreements and Conflicts with Law**

- a. It was noted that there are provisions in the Registry Agreement and Registrar Accreditation Agreement that may conflict with applicable law in certain countries, in particular privacy and data retention, collection and processing law. The importance of having adequate procedures to avoid these conflicts was highlighted.

**V. Next Meeting**

The GAC will meet during the 48<sup>th</sup> ICANN meeting in Buenos Aires, Argentina.

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**RESPONDENT'S EXHIBIT**

## GAC Advice Response Form for Applicants



The Governmental Advisory Committee (GAC) has issued advice to the ICANN Board of Directors regarding New gTLD applications. Please see Section IV of the [GAC Durban Communiqué](#) for the full list of advice on individual strings, categories of strings, and strings that may warrant further GAC consideration.

Respondents should use this form to ensure their responses are appropriately tracked and routed to the ICANN Board for their consideration. Complete this form and submit it as an attachment to the ICANN Customer Service Center via your [CSC Portal](#) with the Subject, “[Application ID] Response to GAC Advice” (for example “1-111-11111 Response to GAC Advice”). All GAC Advice Responses to the GAC Durban Communiqué must be received no later than 23:59:59 UTC on 23-August-2013.

**Respondent:**

Applicant Name	Amazon EU S.à r.l.
Application ID	.AMAZON (1-1315-58086) .アマゾン [AMAZON] (1-1318-83995) .亚马逊 [AMAZON] (1-1318-5591)
Applied for TLD (string)	As displayed above

**Response:**

August 23, 2013

Dr. Steve Crocker, Chairman of the Board  
 Mr. Fadi Chehadé, President & CEO  
 Mr. Cherine Chalaby, Chair of the New gTLD Committee  
 Members of the New gTLD Program Committee  
 Internet Corporation for Assigned Names and Numbers  
 12025 Waterfront Drive, Suite 300  
 Los Angeles, CA 90094-2536

Re: **Amazon’s Response to the ICANN Board of Directors on the GAC Durban Communiqué**

Dear Dr. Crocker, Messrs. Chehadé and Chalaby, and Members of the ICANN Board of Directors New gTLD Program Committee,

Thank you for the opportunity to respond to the Governmental Advisory Committee’s (“GAC”) Advice set forth in the Durban Communiqué (the “GAC Advice”). Amazon respects the vital role of the GAC and its contribution to the multi-stakeholder model of governance. Under the Applicant Guidebook (“AGB”), GAC advice creates a rebuttable presumption for the ICANN Board of Directors New gTLD Program Committee (“NGPC”) that the application

## GAC Advice Response Form for Applicants



should not proceed. Not only is that presumption plainly rebutted here, but following that advice would violate national and international law and upend the settled international consensus embodied in ICANN’s Bylaws, Articles of Incorporation, and Affirmation of Commitments (the “Governing Documents”).

Advice provided by the GAC to the NGPC is just that: advice. Of course, ICANN must act in accordance with its Governing Documents and international and national laws. The GAC Advice as it relates to the .AMAZON, .アマゾン and .亚马逊 applications (collectively the “AMAZON Applications”) ignores both of these key limitations on ICANN’s power to do precisely what the advice advocates – selectively rejecting an application for a new gTLD.<sup>1</sup> Instead, contrary to those limitations, the GAC has injected into the ICANN process political issues already addressed and rejected by international consensus in the ICANN rulemaking process in contravention of the objecting governments’ own national laws and international laws to which they themselves are signatories.

In short, the GAC Advice as it relates to the AMAZON Applications should be rejected because it (1) is inconsistent with international law;<sup>2</sup> (2) would have discriminatory impacts that conflict directly with ICANN’s Governing Documents; and (3) contravenes policy recommendations implemented within the AGB achieved by international consensus over many years. Failure to reject the GAC Advice will fundamentally undermine the multi-stakeholder model and place at risk, and destroy trust in the fairness of, the gTLD process for both current and future applicants.<sup>3</sup>

### I. Background

Amazon and the Amazonia region of South America have coexisted amicably, both regionally and globally, with no interference on regional matters or consumer confusion or harm for more than seventeen years. We have been and continue to be pleased to serve countless customers in the region throughout much of that period. Amazon is not the recognized term for the region in most of South America, which use Amazonas or Amazonia.

<sup>1</sup> See, generally, *ICM Registry, LLC v. ICANN*, ICDR Case No. 50 117 T 00224 08, Judge Stephen M. Schwebel, Presiding. (Feb. 19, 2010).

<sup>2</sup> For the convenience of the NGPC, the Board of Directors, and ICANN legal team as a whole, Amazon has attached as Appendix A Chapters 5-9 of Heather Ann Forrest’s recently published book Protection of Geographic Names in International Law and Domain Name System Policy by Heather Ann Forrest (Wolters Kluwer Law International 2013). Professor Forrest’s research clearly supports the Amazon position that there are no legal rights by a country in a sub-regional or geographic feature name, or any geographical name per se.

<sup>3</sup> See, e.g., Lisa Schuchman, “Amazon’s Domain Name Trouble Threatens ICANN Program”, CORPORATE COUNSEL (Aug. 7, 2013), *available at*: <http://www.law.com/corporatecounsel/PubArticleCC.jsp?id=1202614276487&slreturn=20130719190909>.

## GAC Advice Response Form for Applicants



Although geographic denominations may be registered with the local trademark offices, the term AMAZON is not registered as a geographical denomination by either the Brazilian or the Peruvian trademark offices (or any other government trademark offices in the Amazonia region).<sup>4</sup>

AMAZON, along with AMAZON-formative marks such as AMAZON.COM and AMAZON and Design (collectively the “AMAZON Marks”) is a trademark registered by Amazon more than 1300 times in over 149 countries world-wide – including registrations in the trademark offices and in the ccTLDs of the very regions that now claim Amazon should not be allowed to use its global mark as a gTLD.<sup>5</sup> Amazon has never used its mark as a geographic term. Nor have the governments of South America ever themselves used the names of their geographic regions – “Amazonia,” “Amazonas,” or “Amazon”<sup>6</sup> – or any variation of these terms, as trademarks for Internet services or any other goods and/or services.

The AGB, which was “the result of years of careful implementation of GNSO policy recommendations and thoughtful review and feedback from the ICANN stakeholder community,”<sup>7</sup> does not prohibit or require government approval of the terms .AMAZON, .アマゾン and .亚马逊. Amazon submitted the AMAZON Applications in January 2012 after careful review of, and fully consistent with, those rules.<sup>8</sup>

Despite our long-standing presence throughout the region, the Governments of Brazil and Peru opposed the AMAZON Applications (first through an Early Warning against only the .AMAZON application, and later seeking GAC consensus advice against .アマゾン and .亚马逊 as well). In response, Amazon actively engaged with the governments of the Amazonia region and the Organización del Tratado de Cooperación Amazónica (“OTCA”), the treaty

<sup>4</sup> See discussion *infra* starting at p. 4.

<sup>5</sup> See the list of Amazon Trademarks and domain names issued in countries of the Amazonia region, attached as Appendix B.

<sup>6</sup> Guyana is the only country in the Amazonia region to use the term “Amazon” in reference to the region.

<sup>7</sup> “About the Program”, ICANN. <http://newgtlds.icann.org/en/about/program> (visited Aug. 12, 2013).

<sup>8</sup> .AMAZON, .アマゾン and .亚马逊 are not country or territory names, and thus are not prohibited as gTLD strings under Section 2.2.1.4.1 of the AGB, nor are they geographic names that require documentation of support or non-objection from any government or public authority pursuant to Section 2.2.1.4.2 of the AGB. Five specific categories of strings are considered “geographic names” requiring such government or public authority support, including “any string that is an exact match of a sub-national place name, such as a county, province, or state, listed in the ISO 3166-2 standard.” AGB §2.2.1.4.2. Despite the Peruvian GAC representative’s statement to the contrary during the Durban Meeting, .AMAZON, .アマゾン and .亚马逊 do not fall within any of the five categories, including the ISO 3166-2 list. The Geographic Names Panel has never contacted Amazon regarding its AMAZON Applications, and has not taken the position that the applied-for strings are “geographic names”. In addition, the AMAZON Applications have all passed Initial Evaluation with perfect scores of 100%, putting them in the top 5% of all applications passing evaluation.

## GAC Advice Response Form for Applicants



organization that represents the Amazonia region, through letters, video-teleconference, and an in-person meeting in Brasilia leading up to the ICANN meeting in Beijing. Despite a number of proposals presented by Amazon, including support of a future gTLD to represent the region using the geographic terms actually used by the Brazilian and Peruvian regions, such as .AMAZONIA or .AMAZONAS, the GAC representatives for Brazil and Peru insisted that Amazon withdraw its application or change the strings to “.AMAZONINCORPORATED”, “.AMAZONINC” or “.AMAZONCOMPANY.”

Despite knowing the Community Objection process is the appropriate avenue designated by ICANN for governments wanting to contest geographic terms not included in the AGB, no representative from Brazil or Peru (or any of the other Amazonia region countries or the OTCA) filed a Community Objection. Instead, a third party – the “Independent Objector” (a person known to represent the Government of Peru) – filed a Community Objection on behalf of the region.<sup>9</sup>

At the Beijing meeting, GAC representatives from Brazil and Peru sought GAC consensus advice against the AMAZON Applications. After failing to achieve consensus through that process to block the applications outright, Brazil and Peru instead requested (via the GAC) that the AMAZON Applications – instead of being allowed to proceed as the AGB requires – be delayed so the GAC could “further consider” the strings at the Durban meeting. This Board agreed to the delay.

At the ICANN Durban Meeting the Brazilian and Peruvian GAC representatives asked the GAC to revisit its objection to the AMAZON Applications. Both the Brazilian and Peruvian GAC representatives made public statements emphasizing the attention the Applications had drawn by their own governments and governmental organizations.<sup>10</sup> In its second consideration of the AMAZON Applications, from our understanding following political and economic discussions by several of the objecting countries to persuade others to not block

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<sup>9</sup> As noted in our response to the Beijing GAC Advice and for completeness, the “Independent Objector” (“IO”) represents the Government of Peru in an ongoing case at the International Court of Justice, arguing on its behalf as recently as December 2012. We have separately raised serious concerns over the potential issue of conflicts with ICANN’s legal department – by telephone, in three separate letters, and in two in-person meetings (both before and after the IO filed his objection) – but have yet to receive a response from ICANN.

<sup>10</sup> Indeed, in mid-June a Brazilian Senator held widely-publicized hearings on the issue and created an online petition to gather signatures against the AMAZON Applications. The petition was supposed to be delivered to the ICANN Community at the Durban meeting, purportedly evidencing large scale community support against the AMAZON Applications. The Brazilian GAC representative referenced the petition when requesting the renewed objection be upheld – “we had a huge reaction from the civil society which is organizing a document signed by thousands of people to be sent to the ... ICANN Board” – but the petition itself was never delivered.

## GAC Advice Response Form for Applicants



their objection, the GAC agreed on consensus advice to reject the AMAZON Applications that are before this Board.

### II. The GAC Advice is Inconsistent with International Law

ICANN is required to “operate for the benefit of the Internet community as a whole, carrying out its activities *in conformity with relevant principles of international law and applicable international conventions and local law*”.<sup>11</sup> While the GAC has an appropriate role to play in providing advice to the ICANN Board on matters related to government policy and international and national laws, the GAC Advice here substantially oversteps those bounds. ICANN’s failure to reject that advice would plainly violate relevant principles of international law and applicable conventions and local law, and therefore violate ICANN’s Governing Documents.

Governments do not have a per se national or global exclusive right to terms that are also used to represent a geographic area – be it a country, city, town, mountain, river, tributary, volcano, or other. Any rights in geographic terms are granted by law and, generally, cannot prohibit other uses of the term in a non-geographic manner. Indeed, the international legal system has well-established mechanisms for protecting terms, including use of geographical names. These mechanisms fall into one of four major categories: (1) Intellectual Property; (2) Regulatory Recognition; (3) National Sovereignty; and (4) Indigenous Rights. None of these mechanisms has ever been used by the objecting countries to protect the geographic term “Amazon” or any other translation or variation (as opposed to Amazon’s non-geographic use of the separate trademark AMAZON for Internet and e-commerce services).

#### 1. Intellectual Property: Trademark Rights

The Paris Convention of 1883 (“Paris Convention”) is the basic building block for modern international intellectual property law. Importantly, the Agreement on Trade-Related Aspects of Intellectual Property Rights (“TRIPS”) incorporates by reference Paris Convention Articles 1-12 and 19, and mandates that all World Trade Organization members enforce these provisions whether they are members of the Paris Convention or not. Under TRIPS and the Paris Convention, several forms of intellectual property protections and rights are recognized.

First, trademark protection is provided to terms that may act separately as geographic references, but are for trademark purposes distinctive of particular goods or services and

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<sup>11</sup> Articles of Incorporation of ICANN, § 4.

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indicate a particular source of these goods or services.<sup>12</sup> The AMAZON Marks use the term AMAZON not as a geographic reference, which locally would be AMAZONIA and/or AMAZONAS, but as a fanciful term unrelated to the region. In fact, on July 26, 2013, the Peruvian trademark office, in considering the registrability of a third party's trademark applications for AMAZONAS, AMAZONASPERU and AMAZONAS.PE, and related oppositions, noted no similarities between these marks and AMAZON *"since the denomination AMAZONAS makes reference to one of the regions located north of Peru, while the denomination AMAZON will be perceived by the average consumer as a fanciful sign."*<sup>13</sup>

Here, Amazon holds trademark rights in and to the mark AMAZON as it relates to Internet and e-commerce services, among others. Amazon does not use the AMAZON Marks in any way that references or relates to the Amazonia region (in other words, the AMAZON Marks are not geographic terms; they are trademarks). The AMAZON Marks have been registered more than 1300 times in over 149 countries world-wide, *including in Brazil and Peru*. The very governments that now object to Amazon's use of the AMAZON Marks globally in connection with Internet and e-commerce services are now trying to ignore and erase not only the fact that Amazon has existed on the Internet for more than 17 years, but the fact that *these and other governments outside of their region have already expressly granted Amazon the right to use its marks for these services*.

Article 16(1) of TRIPS gives the owner of a registered trademark certain exclusive rights in that mark. Such rights can legally prevent other parties from using the same mark, including objecting countries or other parties, in the course of trade. The objecting governments have no superior legally recognized trademark rights in the term AMAZON for Internet-related services.

Second, Article 8 of the Paris Convention also gives international rights to protect trade names of commercial entities. To the best of Amazon's knowledge, none of the objecting countries owns legally recognized trade name rights in the term AMAZON.

Third, Article 6-ter of the Paris Convention protects various official names, insignia, flags, emblems, or hallmarks which indicate warranty and control. Brazil and Peru have sought to protect several of their insignia in this manner, but not the term AMAZON. For example, a design mark for CAFÉ DO BRASIL and the Official Seal of Peru, owned by Peru, were filed by Brazil and Peru respectively in the US Patent and Trademark Office under 6-ter. No such action was taken for the term AMAZON.

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<sup>12</sup> Examples are LONDON FOG for raincoats (the capital city of the United Kingdom), TSINGTAO for beer (a city in China), and HAWAIIANAS for flip flops (Hawaiian in Portuguese).

<sup>13</sup> *Maribel Portella Fonseca v. Amazon Technologies, Inc.*, Resolución N. 2154-2013/CSD-INDECOPI.

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Fourth, Articles 10 and 10 *bis* of the Paris Convention mandate that Member States undertake to protect against all acts of unfair competition and to give infringed parties remedies to protect their rights. Unfair competition protects against acts which deceive the public and are used by competitors in bad faith to undermine each other's businesses. Unfair competition protection could theoretically be available for geographical names if such names were used in a commercial activity. Because they have no commercial use of the term AMAZON, the objecting governments have no legally recognized unfair competition rights in the term AMAZON.

Fifth, another way that a geographical term may receive intellectual property protection is as an "appellation of origin" or "geographical indication" (hereinafter, collectively, "geographical denomination"). The principal methods for protecting geographical denominations arise under national law, bilateral treaties and global treaties. The most well-known geographic denomination is CHAMPAGNE for a sparkling wine from a particular region of France produced under strict protocols. In the international context, the principal global treaties that include references to geographical denominations are the Paris Convention of 1883, the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods of 1891, the Lisbon Agreement on the Protection of Appellations of Origin, and the WTO TRIPS Agreement of 1994. The objecting governments have not protected and have not sought to protect the term AMAZON as a geographical denomination under the framework provided by any of these treaties.<sup>14</sup>

The principal treaty recognizing geographical denominations (which it terms "geographical indications") is the TRIPS Agreement,<sup>15</sup> which provides relative protection against false geographical indications that are misleading (including misleading use of a previously recognized geographical indication as a trademark). Even if the objecting governments were now to establish geographical indication rights in the term AMAZON (which, as noted above, they presently do not hold), these rights would be limited to a particular set of goods or services that these governments had shown to "originate" in the Amazonia region or for which "a given quality, reputation or other characteristic...[were] essentially attributable to" the Amazonia Region.<sup>16</sup> Internet-related services would certainly not qualify.

As a result, none of the objecting governments can claim intellectual property rights in and to the term AMAZON, nor take advantage of geographical denominations protections under

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<sup>14</sup>Some of the objecting governments have protected geographic indications for other terms. Peru, for example, has protected over 700 geographic indications under the Lisbon Agreement, but none is for AMAZON.

<sup>15</sup> All members of the WTO are members of the TRIPS Agreement. As of the date of this letter, 159 countries are members of the WTO.

[http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org6\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm).

<sup>16</sup> TRIPS Agreement, Article 22(1).

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national and international laws. Even under the narrowest interpretation of Amazon’s trademark rights, Amazon’s right to use the term AMAZON for Internet-related services would prevail under existing national and international laws. Respect of well-established national and international intellectual property laws alone requires rejection of the GAC Advice.

### 2. Regulatory Recognition

In many legal systems, certain commodities have specific naming protocols to avoid confusion in the international marketplace. For example, the term NAPA is protected for wines from the Napa Valley in California, USA, under the U.S. system of “American Viticultural Areas.” This type of governmental protection is a helpful system for protection of geographical names that do not fall within the various intellectual property rights granted nationally and internationally. In addition, geographical names are protected under international, national, and municipal laws as they relate to consumer protection, such as regulations designed to prevent consumer confusion and harm.

The objecting countries have no legally recognized regulatory rights in the term AMAZON.

### 3. National Sovereignty

Under international law, sovereign states have certain rights to control their national boundaries and be represented in international organizations and related interests. These rights, however, do not extend to preventing use of terms in a non-geographic manner (i.e., as a trademark or for use in connection with services that bear no relation to a physical, geographic region), particularly when their own national laws allow such use. The very countries objecting to Amazon’s use of AMAZON for Internet services – as well as numerous other sovereign countries – granted registrations in the AMAZON Marks under their own laws on this very basis. Indeed, there is no international consensus as to whether sovereign rights over boundaries extend to country names, let alone any sub-region or physical feature such as a river, nor are there any current global mechanisms for recognizing such rights, but there is consensus on the protection of a trademark owner’s rights through the treaty provisions found in the TRIPS Agreement.

The objecting countries have no legally recognized independent sovereignty rights in any sub-regional names for the term AMAZON.

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### 4. Indigenous Rights

Certain human rights are protected under international law (and even under ICANN policy where the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights are mentioned). In addition, consideration is given to the UNESCO cultural indicia, human rights in property ownership, self-determination, and free expression, and other inherent political rights. However, the objecting countries have no legally recognized rights in the term AMAZON.

To the contrary, corporate ownership of trademarks is clearly protected under human rights. In the European Union case *Anheuser-Busch, Inc. v. Portugal*, Application No. 73049/01 (1/11/2007), the Grand Chamber of the European Court of Human Rights upheld trademarks as valid possessions ruled by human rights law. It is important to note as well that human and indigenous rights under these doctrines belong to the individual, not the state, and these rights protect individuals from state action to take away their rights and property. In this matter, not only do the objecting governments not have any human or indigenous rights in the word AMAZON, but international law forbids them from globally limiting and devaluing this well-known trademark.

Despite all the methods listed above to provide protection for geographical names, the objecting countries have pursued none of them in connection with the term AMAZON. Amazon does not dispute this region's importance to its inhabitants and their governments. This importance, however, does not grant the region – or national governments – per se rights to prevent use of an otherwise unprotected geographic term, nor does it give the GAC or ICANN the right to create extraterritorial, sui generis, per se rights in geographic terms. Indeed, to the extent that this is a “matter of principle,”<sup>17</sup> the principle at stake is the obligation of WTO Member states and the ICANN Board to follow international law as set out in the applicable treaties, including most pertinently the TRIPS Agreement administered by the WTO. As noted above and further discussed below, such treaties carefully balance the competing interests in protecting geographic denominations and trademarks. It is to these international treaties that the ICANN Board must look for guidance, not the vague and unsubstantiated concerns upon which the GAC Advice is grounded.

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<sup>17</sup> The Peruvian GAC representative in Durban stated, “dot Amazon is a geographic name that represents important territories of some of our countries which have relevant communities with their own culture and identity directly connected with the name. Beyond the specifics, this should also be understood as a matter of principle.” Quotes taken from the live scribe feed as provided by ICANN: <http://icann.adobeconnect.com/p2y1517vnt2/>. Transcripts attached as Appendix C.

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Both the TRIPs Agreement and the Lisbon Agreement contain provisions relating to the resolution of conflicts between trademarks and geographical denominations. International discussions and negotiations on ways to interpret, reshape, or amend these treaty provisions remain ongoing. Many third-party organizations and NGOs active in the protection of trademarks or geographical denominations have also weighed in with their opinions on ways to address situations where one party's trademark rights appear to conflict with another party's interest in protecting a geographical denomination. *Not once in the history of debate and discussion of this issue has a nation or organization with an interest in this topic advanced the extreme position now taken by the governments of Brazil and Peru with respect to the term AMAZON: that a local region's newly-expressed interest in a particular geographical term **per se** – which is not used or commonly recognized as a source identifier for any product or service – be privileged over a third-party's longstanding, established trademark rights that the countries of this very local region have themselves recognized, registered and protected for over a decade.*

To the contrary, where a trademark has been protected in a particular jurisdiction before the date on which the TRIPs Agreement becomes effective in that jurisdiction, or before the protection of a conflicting geographical indication in its country of origin, Article 24(5) of the TRIPs Agreement further specifies that the implementation of the provisions of the section on Geographic Indications “shall not prejudice eligibility for or the validity of the registration of [such] trademark, or the right to use [such] trademark, on the basis that such a trademark is identical with, or similar to, a geographical indication.”<sup>18</sup>

A 2005 WTO Panel addressed whether the exception provided for in Article 24(5) of the TRIPs Agreement amounts to a “first in time, first in right” rule or mandates coexistence of the relevant trademark and geographical indication. In that case, Australia and the United States challenged a 1992 European Union regulation for protecting geographical denominations for agricultural products and foodstuffs.<sup>19</sup> The WTO Panel concluded that in

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<sup>18</sup> TRIPs Agreement, Article 24(5). The full text of this section reads: “Where a trademark has been applied for or registered in good faith, or where rights to a trademark have been acquired through use in good faith either: (a) before the date of application of these provisions in that Member as defined in Part VI; or (b) before the geographical indication is protected in its country of origin; measures adopted to implement this Section shall not prejudice eligibility for or the validity of the registration of a trademark, or the right to use a trademark, on the basis that such a trademark is identical with, or similar to, a geographical indication.”

<sup>19</sup> *European Communities – Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs*, WT/DS290/R (15 March 2005) (hereinafter “WTO Decision 290”). Full information on this case, including a copy of the Report of the WTO Panel, is available at: [http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds290\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds290_e.htm). See also Council Regulation (EEC) No. 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (hereinafter “E.U. Foodstuffs Regulation”), available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31992R2081:EN:HTML>. This E.U. Regulation was subsequently amended to comply with the WTO panel's decision in the case

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accordance with Article 17, the TRIPs Agreement allows for a limited exception to a trademark owner's rights – namely, that the trademark owner may be compelled to accept coexistence when trademark and geographical indication rights conflict.<sup>20</sup> Notably, this decision does not suggest that geographical indication rights should be allowed to trump trademark rights.

Peru, Brazil and the other South American countries of the Amazonia region that support the objection to the AMAZON Applications are WTO members and therefore legally bound to implement the terms of the TRIPs Agreement and to follow the rulings of the WTO on its interpretation of the TRIPs Agreement. *Under the rule of international law established by the WTO's decision discussed above, it is clear that even if Brazil and Peru were to now recognize the term AMAZON as a protected geographical denomination, such protection would not permit them to prohibit or limit the use of the previously recognized trademark AMAZON.* In other words, neither Brazil nor Peru, and likely no other governments, could bar the AMAZON Applications in their own countries under their own laws, and to do so would violate international laws.

Ironically, the Brazilian government filed third-party arguments in the WTO case discussed above that were far more sympathetic to trademark-owner concerns than the position it is now taking regarding the AMAZON Applications. Brazil's arguments stressed the importance of maintaining the value of trademarks and referred dismissively to "a theoretical hypothesis of coexistence between a trademark and a geographical indication."<sup>21</sup> As Brazil candidly and correctly concluded at that time:

Brazil believes that without disregarding the peculiar features surrounding the use of a geographical indication and the need to protect it, one must not do so at the expense of both the trademark owners and the consumers. Otherwise, the commercial value of a trademark may be undermined, which runs contrary to the 'exclusive rights' of a trademark owner provided for in Article 16.1 of the TRIPs Agreement.<sup>22</sup>

The Brazilian government further elaborated that in its view, resolution of conflicts between trademarks and geographical denominations should:

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discussed here; the replacement regulation is Council Regulation (EC) No. 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (hereinafter "E.U. Amended Foodstuffs Regulation"), available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:093:0012:01:EN:HTML>.

<sup>20</sup> *Id.* at 143-50.

<sup>21</sup> WTO Decision 290, Annex C, C-7.

<sup>22</sup> *Id.* at C-7 - C-8.

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[T]ake due account of the fact that (a) geographical indications do not *a priori* prevail over registered trademarks[.]<sup>23</sup>

Thus, under Brazil's *own* interpretation of the TRIPs Agreement, one thing is clear: any rights that Brazil or any of its neighboring countries may have accrued in the geographical term AMAZON should not *a priori* prevail over Amazon's registered trademark rights in the term AMAZON, which have long been recognized in the region. A government cannot selectively use ICANN to override the protections found in TRIPs and other international laws.

The ICANN Board had it right when it approved the policy recommendations resulting in the AGB. It was – and is – essential that the new gTLD application process be transparent, predictable, and non-discriminatory. *The ICANN Board recognized that allowing governments to retroactively determine names that are of concern because of geographic connotations would lead to discriminatory and chaotic consequences.*<sup>24</sup> To provide the GAC with an effective veto power over individual strings injects unpredictability<sup>25</sup> and politics<sup>26</sup> into the gTLD application process. It allows governments to use the ICANN Board to take actions the governments could not take – and have not taken – under their own laws, creating a new form of *sui generis* rights along the way.

At minimum, Amazon requests that, pursuant to the authority reserved to itself in AGB Section 3.1, the NGPC obtain, before it considers the GAC Advice against the AMAZON Applications, independent expert advice on the protection of geographic names in international law generally and the violations of relevant principles of international law and applicable conventions and local law represented by the GAC Advice. Amazon believes that the legal treatise cited in notes 1-2 above and the discussion in Section II above provide

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<sup>23</sup> *Id.* at C-9.

<sup>24</sup> See the attached highlighted communications between the ICANN Board and the GAC from the period 2009 to 2011 on the issue of geographic names, attached as Appendix D.

<sup>25</sup> From the Ugandan GAC representative in Durban: "We're going through a process of generating similar strings which may be of concern to us. So I'm wondering should we always have to come here and make statements like this or there's going to be a general way of protecting those strings that we think are sensitive to us."

From the Brazilian GAC representative in Durban: "Now we have dot amazon. But in the future, maybe you can have dot sahara, dot sahel, dot nile, dot danube. I don't know if the names are there. I don't have the list by heart. But maybe the names are not there. But it doesn't mean they're not important for national culture and traditional concerns in your countries."

Quotes taken from the live scribe feed as provided by ICANN:

<http://icann.adobeconnect.com/p2y1517vnt2/>. Transcripts attached as Appendix C.

<sup>26</sup> From the Sri Lankan GAC representative in Durban: "This issue of dot amazon has reached our foreign ministry and has gone to the highest level of attention between discussions with the Brazilian government on a lot of bilateral trade related issues." Quotes taken from the live scribe feed as provided by ICANN: <http://icann.adobeconnect.com/p2y1517vnt2/>. Transcripts attached as Appendix C.

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material information to the NGPC that demonstrate why the NGPC should not accept GAC Advice against the AMAZON Applications, and why it should allow the AMAZON Applications to proceed.

NGPC acceptance of the GAC Advice would destroy hard fought international consensus and well-settled expectations on geographic names. It would impermissibly place ICANN above accepted international and national laws at the behest of individual governments in ways that will not hold up on review in other forums.

### III. ICANN Must Act in a Predictable, Transparent, and Non-Discriminatory Manner

In addition to violating various international laws, accepting the GAC Advice would violate ICANN's Governing Documents. The right to provide advice on individual applications based on sensitivities, as granted by the Community, could not have intended such consequences. If so, the entire process itself may be in violation of ICANN's guiding principles.

#### A. GAC Advice Throws Out the Transparency and Predictability Carefully Balanced in the Development of the AGB

ICANN's Governing Documents require ICANN to operate in an "open and transparent" manner.<sup>27</sup> At the outset, the GNSO Council New gTLD Policy Recommendations emphasized the need to support these requirements and to provide new gTLD applicants with a transparent and predictable process.<sup>28</sup> Both the GAC<sup>29</sup> and the ICANN Board<sup>30</sup> itself adopted and endorsed the importance of providing new gTLD applicants with a transparent and predictable process.

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<sup>27</sup> Articles of Incorporation of ICANN, § 4. ICANN Bylaws, Article II, §2(7). Affirmation of Commitments, §9.1.

<sup>28</sup> "The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination. All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process." ICANN GNSO Final Report, Policy Recommendation 1, Aug. 8, 2007.

<sup>29</sup> "The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination. All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process." Annex B, "GAC Principles Regarding New gTLDs", §2.5, GAC Communique – Lisbon, Mar. 28, 2007.

<sup>30</sup> "Resolved (2008.06.26.02), based on both the support of the community for New gTLDs and the advice of staff that the introduction of new gTLDs is capable of implementation, the Board adopts the GNSO policy recommendations for the introduction of new gTLDs." Adopted Board Resolutions – Paris, June 26, 2008.

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The ICANN Community and Board underscored the importance of predictability for applicants during discussions about blocking terms that governments determined caused “sensitivities” to a region.<sup>31</sup> The GAC repeatedly requested that the Board and ICANN Community afford the same protections to names that do not appear in the AGB-referenced ISO lists as to names that do appear. To ensure predictability and fairness to applicants – and prevent precisely the sort of ad hoc undermining of ICANN’s rules now playing out here – the Board expressly rejected these requests.<sup>32</sup> To address government concerns over strings that raise “national, cultural, geographic, religious and/or linguistic sensitivities or objections that could result in intractable disputes”, the AGB was revised to include section 2.2.1.4.2 of the AGB and the ability by individual governments to file both Community and Limited Public Interest Objections.<sup>33</sup>

In order to ensure transparency and predictability, the ICANN Board specifically precluded the GAC and/or governments from having broad post-application discretion to block applications based on non-geographic use of specific terms. Advice must be based on more than a “principle” of dislike.

The GAC would now have the Board sweep away years of multi-stakeholder input and policy developments, retroactively implementing the proposed but never adopted GAC’s 2007 Principles in connection with geographic names, and reject applications in violation of ICANN’s Governing Documents. If the Board accepts the GAC Advice on the AMAZON Applications, no applicant can ever be sure that its application – and the significant resources needed to support it – meets the requisite standards for filing. Applicants instead become pawns in politics unrelated to the DNS or Internet, subject to negotiations with governments over business models and branding that they would not otherwise be required to undertake under national laws.

### B. GAC Advice Has A Discriminatory Effect on Amazon

Pursuant to ICANN’s Governing Documents, ICANN must act in a non-discriminatory, neutral

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<sup>31</sup> “The Board’s intent is, to the extent possible, to provide a bright line rule for applicants. . . . It is felt that the sovereign rights of governments continue to be adequately protected as the definition [of geographic names] is based on a list developed and maintained by an international organization.” Letter from ICANN (Dengate-Thrush) to GAC (Karklins), Sept. 22, 2009.

<sup>32</sup> “The Board has sought to ensure [...] that there is a clear process for applicants, and appropriate safeguards for the benefit of the broad community including governments. *The current criteria for defining geographic names as reflected in the Proposed Final Version of the Applicant Guidebook as considered to best meet the Board’s objectives* and are also considered to address to the extent possible the GAC principles.” ICANN Board – GAC Consultation: Geographic Names, Feb. 21, 2011 (emphasis added).

<sup>33</sup> ICANN Board – GAC Consultation: Objections, Feb. 21, 2011. See also ICANN Board – GAC Consultation: Geographic Names, Feb. 21, 2011.

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and fair manner.<sup>34</sup> Indeed, one of the core values guiding ICANN’s decisions and actions is “[m]aking decisions by applying documented policies neutrally and objectively, with integrity and fairness.”<sup>35</sup> The GAC now asks this Board to ignore these requirements.

In his July 16, 2013 public statement to request GAC Consensus Advice against the AMAZON Applications, the Brazilian GAC representative stated that the AMAZON Applications are of “deep concern” to the Brazilian Society and create a “risk to have the registration of a very important cultural, traditional, regional and geographical name related to the Brazilian culture.” The Brazilian GAC representative contended that there is concern over “the registration of this very important name to the Brazilian Society.” He claimed that representatives from Brazil and other countries met with Amazon in good faith – that Amazon is willing to “make a good job” – but “*for a matter of principle*, [Brazil] cannot accept this registration” and asked the GAC to “reinforce the Brazilian demand to the GAC members to approve a rejection on the registration of dot amazon by a private company in name of the public interest.”<sup>36</sup>

Notably, neither the objecting countries nor the GAC objected to another gTLD application with a nearly identical fact pattern. Ipiranga Produtos de Petroleo S.A. (“Ipiranga”), the applicant for .IPIRANGA, Appl. No. 1-1047-90306, is a Brazilian private, joint stock company. Ipiranga is “one of the largest oil distribution companies in Brazil and is the largest private player in the Brazilian fuel distribution market.”<sup>37</sup> Ipiranga “holds various trademarks in Brazil to protect its brand. . . . [as well as] various trademarks in South America” and various domain names to protect its brand, such as ipiranga.com.br and ipiranga.net.br. “Ipiranga’s operations also include a successful, promotion-based e-commerce website ipirangashop.com.” Ipiranga states it has invested heavily in brand awareness and has received extensive recognition, including “Second Most Remembered and Preferred Trademark” in the field of oil distribution in Brazil, and “Most Well-Known and Preferred Brand in the field of fuels.”

According to the .IPIRANGA Application, Ipiranga applied for a gTLD to, (1) “secure and protect the Applicant’s key brand” (“IPIRANGA”) as a gTLD; (2) “reflect the IPIRANGA brand

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<sup>34</sup> ICANN shall not apply its standards, policies, procedures, or practices inequitably or single out any particular party for disparate treatment unless justified by substantial and reasonable cause, such as the promotion of effective competition. ICANN Bylaws, Article II, §3.

<sup>35</sup> ICANN Bylaws, Article I, §2(8).

<sup>36</sup> Quotes taken from the live scribe feed as provided by ICANN: <http://icann.adobeconnect.com/p2y1517vnt2/>. Transcripts attached as Appendix C (emphasis added).

<sup>37</sup> New gTLD Application Submitted to ICANN by: Ipiranga Produtos de Petroleo S.A. Taken from the public portion of the application as found at <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1509> (hereinafter “.IPIRANGA Application”), Response to Question 18(a).

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at the top level of the DNS' hierarchy"; (3) provide "stakeholders of the Applicant with a recognizable and trusted identifier on the Internet"; (4) provide "stakeholders with a secure and safe Internet environment, under the control of the Applicant;" and (5) "use social communities to increase brand awareness and consumer trust." Ipiranga stated that its .IPIRANGA Application was not a geographic name.

Ipiranga is a district of São Paulo.<sup>38</sup> The Ipiranga Brook is a river in the São Paulo state in southeastern Brazil where Dom Pedro I declared independence in 1822, ending 322 years of colonial rule by Portugal over Brazil.<sup>39</sup> Indeed, the Ipiranga is so important to Brazilian culture and heritage that it is included in the first stanza of the national anthem.<sup>40</sup>

Nowhere in the .IPIRANGA Application does Ipiranga state that it obtained approval (or non-objection) from the Brazilian government for its application.<sup>41</sup> Nowhere in the application does Ipiranga state that it will act in any interest but the protection of its rights as a private company. The Brazilian GAC representatives did not issue an Early Warning against the .IPIRANGA Application nor did Ipiranga submit a Public Interest Commitment.<sup>42</sup>

Notwithstanding the obvious importance of the term "Ipiranga" to Brazil's heritage, the GAC did not object to the .IPIRANGA Application nor, to Amazon's knowledge, did the GAC even discuss the .IPIRANGA Application during the GAC sessions in Beijing<sup>43</sup> or Durban.

Amazon does not believe the .IPIRANGA Application should be rejected; quite to the contrary. Just like Ipiranga, the oil company, Amazon is a company that has a globally established reputation separate and distinct from a geographic term.<sup>44</sup> Amazon does not believe that the Brazilian government is purposefully acting in a discriminatory way towards non-Brazilian companies, but the facts - intentional or not - highlight the discriminatory effect of allowing governments to retroactively decide "winners" and "losers".

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<sup>38</sup> See Ipiranga, Wikipedia <<http://en.wikipedia.org/wiki/Ipiranga>>. Attached as Appendix E.

<sup>39</sup> See Ipiranga Brook, Wikipedia <[http://en.wikipedia.org/wiki/Ipiranga\\_Brook](http://en.wikipedia.org/wiki/Ipiranga_Brook)>. Attached as Appendix E.

<sup>40</sup> English translation: "The placid shores of Ipiranga heard; the resounding cry of a heroic people; and in shining rays, the sun of liberty; shone in our homeland's skies at this very moment." See Brazilian National Anthem, Wikipedia <[http://en.wikipedia.org/wiki/Brazilian\\_National\\_Anthem](http://en.wikipedia.org/wiki/Brazilian_National_Anthem)>. Attached as Appendix E.

<sup>41</sup> Even if the oil company has received permission, it would again show a potential bias toward local companies over foreign companies in approving applications.

<sup>42</sup> See New gTLD Current Application Status <<https://gtldresult.icann.org/application-result/applicationstatus/viewstatus>>. Attached as Appendix F.

<sup>43</sup> The majority of the GAC sessions held in Beijing were closed to the community.

<sup>44</sup> And unlike in the .IPIRANGA Application, the AMAZON Applications are not matches of the geographic term at issue with the Government of Brazil.

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Other gTLD applicants have applied for strings that also could be considered “geographic” strings or may cause cultural sensitivities, but have not been the subject of GAC Advice.<sup>45</sup> Indeed some of these applicants not only provided no documentation of governmental or regional support or non-objection, and received no GAC advice, but have even successfully sought trademark registrations in the region.<sup>46</sup> Again, Amazon does not suggest that the NGPC should reject these and all other applications that may fit one country’s definition of “geographic” or “sensitive.” But the Board has a legal and institutional duty to ensure that the rules set forth in the AGB are applied in a consistent, non-discriminatory way. It was for these very reasons the ICANN Community insisted on a definition of geographic names and a clearly defined process for considering any objections.

Instead of applying the clear definitions on geographic names set forth in the AGB, the GAC is attempting to apply the 2007 GAC Principles retroactively and selectively – principles never approved or adopted by ICANN and that have no effect as policy – and ask the NGPC, in violation of the Bylaws, to uphold its decision. The intent behind GAC advice on individual applications was not to allow the GAC to override the rules set forth regarding geographic names in the AGB; to override years of multi-stakeholder created policy; and to apply a discriminatory veto against certain applications in direct violation of the ICANN Bylaws.<sup>47</sup> ICANN should not permit GAC Advice to be used to achieve any individual government’s political goals – be it *de facto* protections a government is unable to get under ongoing intergovernmental treaty negotiations or under its own national laws or as part of a wider discussion on Internet governance. The Board should reject the GAC Advice against the AMAZON Applications.

#### **IV. GAC Advice Contravenes Policy Recommendations as Implemented in the AGB**

Years of policy development led to the creation of the AGB. Despite retroactive characterizations by various GAC representatives, the 2007 Principles proposed by the GAC were never approved or adopted by the multi-stakeholder ICANN Community or Board. Instead, they were recommendations that were taken into account by the Generic Names Supporting Organization (“GNSO”) and Board and considered as part of the multi-stakeholder process that developed the AGB, which was adopted by the Board. Attempts to reinstate the 2007 Principles as ICANN policy contravene the Policy Development Process (“PDP”) set forth in ICANN’s Bylaws and undermine the entire multi-stakeholder process. If

<sup>45</sup> For example, applications were submitted for LATINO, LAT, CHESAPEAKE, JAVA, LINCOLN, DODGE, EARTH, and others.

<sup>46</sup> For example, a Chilean trademark registration, Registration Number 1.008.605, issued on May 6, 2013 to a gTLD applicant for the mark LATINO in connection with domain name registration services in class 45.

<sup>47</sup> See, generally, *ICM Registry, LLC v. ICANN*, ICDR Case No. 50 117 T 00224 08, Judge Stephen M. Schwebel, Presiding. (Feb. 19, 2010).

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the ICANN Board accepts this advice, it will unravel years of policy development in violation of the ICANN Bylaws and have far reaching effects on the whole program.

Under the ICANN Bylaws, “there shall be a policy-development body known as the [GNSO], which shall be responsible for developing and recommending to the ICANN Board substantive policies relating to generic top-level domains.”<sup>48</sup> ICANN relies on the GNSO to create gTLD policy, and its advisory committees, including the GAC, to provide *advice* on policy recommendations before the Board.

The GNSO spent several years developing the policy recommendations for the introduction of new gTLDs, including limitations to potential entrants. The PDP involved numerous debates, changes, and variations, which included stakeholders from the entire ICANN Community (including the “Principles” proposed by the GAC in 2007), and resulted in the final new gTLD policy recommendations. These recommendations were accepted by a supermajority of both the GNSO and the ICANN Board of Directors. The AGB represents the implementation of these policy recommendations.<sup>49</sup>

Among many of the topics that were considered as part of the PDP was the question of “geographic terms” and governments’ rights to object to strings representing geographic terms. In 2007 the GAC issued a set of “public policy” principles that the GAC advised should be implemented in the new gTLD process, including the avoidance of “country, territory or place names, and country, territory or regional language or people descriptions” and that new gTLDs should “respect” “sensitivities regarding terms with national, cultural, geographic and religious significance.”<sup>50</sup> These principles, however, are not policy and neither the ICANN Board nor the ICANN Community wholesale adopted them.

Instead, the ICANN Board took the principles as advice – as per the role of the GAC – and individually adopted or modified them over the course of several years. The Board and the ICANN Community identified the GAC principles on geographic names, in particular, as problematic. No list of geographic terms (beyond the AGB definition) could be agreed upon – *including by the GAC itself* – to provide applicants with the relevant transparency and predictability that all parties agreed Applicants needed, and which ICANN’s Governing Documents require.

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<sup>48</sup> ICANN Bylaws, Article X, §1.

<sup>49</sup> Amazon is not making separate comments on the policy versus implementation debate. It is clear, however, that GNSO policy recommendations, accepted by the ICANN Board, must be the subject of a PDP before they can be modified.

<sup>50</sup> Annex B, “GAC Principles Regarding New gTLDs”, §2.1-2.2, GAC Communique – Lisbon, Mar. 28, 2007.

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As late as February 23, 2011, the GAC requested a mechanism to protect governmental interests and define names considered geographic. The GAC requested clarification that “ICANN will exclude an applied for string from entering the new gTLD process when the government formally states that this string is considered to be a name for which this country is commonly known as.”<sup>51</sup> The ICANN Board responded:

The process relies on pre-existing lists of geographic names for determining which strings require the support or non-objection of a government. Governments and other representatives of communities will continue to be able to utilize the community objection process to address attempted misappropriation of community labels. . . . ICANN will continue to rely on pre-existing lists of geographic names for determining which strings require the support or non-objection of a government.<sup>52</sup>

Section 3.1 of the AGB states that “GAC Advice on new gTLDs is intended to address applications that are identified by governments to be problematic e.g., that potentially violate national law or raise sensitivities.” Section 3.1 of the AGB was not intended to give government broad retroactive discretion to block any term in any language/script based solely on a government’s general “principle” or dislike, nor for a non-geographic, fanciful use for a term not included in the lists of banned terms found in the AGB.<sup>53</sup> Otherwise the GAC would have “an automatic veto” over the outcome of a PDP that was adopted by two super majorities on a string-by-string basis (as “sensitivities” could include any potential issue to a government). Indeed, communications between the GAC and the Board make it clear the opposite is true. “While freedom of expression in gTLDs is not absolute, those claiming to be offended on national, cultural, geographic or religious grounds do not have an automatic veto over gTLDs.”<sup>54</sup>

Amazon followed the rules set forth in the AGB and submitted its AMAZON Applications in full compliance with and reliance on the policies developed and agreed upon by the ICANN Community and reflected in the AGB. The GAC Advice now asks that the ICANN Board ignore this multi-year, multi-stakeholder process. Providing the GAC with the veto power that this GAC Advice represents, and adoption of such Advice, puts in to play violations of ICANN’s own founding principles and Governing Documents not only for this round of applications, but future rounds as well. Rejection of the GAC Advice on the Amazon Applications by the NGPC is the correct course of action.

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<sup>51</sup> Letter from ICANN (Dengate-Thrush) to GAC (Dryden), March 5, 2011.

<sup>52</sup> *Id.* (emphasis added).

<sup>53</sup> And it certainly was not intended to create new rights in a government in opposition with international law. See discussion above starting at p. 4.

<sup>54</sup> Letter from ICANN (Dengate-Thrush) to GAC (Dryden), November 23, 2010.

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### V. Summary

Amazon has no doubt that individual country representatives believe they are representing the best interests of their regions. These same countries had the option to file for a new gTLD or file a Community Objection to the AMAZON Applications. They did neither. Instead, they now seek to use the GAC Advice process as a means to (1) override years of Community policy development; (2) violate ICANN's Governing Documents; and (3) violate both international and national law.

Individual governments have an important role in the multi-stakeholder model. But they plainly cannot exercise veto power over multi-stakeholder policy and ICANN's Governing Documents or use ICANN to override the very laws under which the same governments operate.<sup>55</sup> The NGPC should not allow any government to accomplish through the GAC what they have not – and cannot – accomplish through their national legislatures.

ICANN has already independently “reaffirmed its commitment to be accountable to the community for operating in a manner that is consistent with ICANN's Bylaws, including ICANN's Core Values such as ‘Making decisions by applying documented policies neutrally and objectively, with integrity and fairness.’”<sup>56</sup> Amazon respectfully requests that the NGPC stand by that commitment, abide by relevant international and national law, and reject the GAC Advice on the AMAZON Applications.

We thank the NGPC for its time and consideration of our comments. We request an opportunity to meet with the New gTLD Program Committee and the ICANN General Counsel to discuss this submission in more detail.

With best regards,

Stacey King  
Sr. Corporate Counsel, Amazon

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<sup>55</sup> This is one of the reasons preserving a multi-stakeholder model, where no one entity – including government – can use the process for political means and/or inject external issues into the process, is so important.

<sup>56</sup> Letter from ICANN (Dengate-Thrush) to GAC (Dryden), November 23, 2010.

**APPENDIX A**

## Chapter 5

# Intellectual Property Rights in Geographic Names

Domain names are not intellectual property rights.<sup>548</sup>

### 5.1 GEOGRAPHIC NAMES AS 'INTELLECTUAL PROPERTY'

Governments at national and sub-national levels have used the phrase 'legitimate interests'<sup>549</sup> when asserting exclusive rights in geographic names, but it has yet to be determined what rights international law actually recognizes in respect of geographic names, let alone their exclusivity. Intellectual property rights are an obvious potential basis of recognition of rights in geographic names due to the strong similarities between geographic names and other intellectual property subject matter, as well as the fact that names have long been protected through intellectual property law as trademarks. The fundamental aim of this study is, however, to dispel reliance on assumptions regarding geographic names. A thorough analysis is therefore undertaken to determine conclusively whether geographic names fall

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548. Smith, *Internet Law and Regulation* 89, 3-042.

549. See for example, *St Moritz v. StMoritz.com*, WIPO Case No. D2000-0617; *Sydney Airport v. Crilly*, WIPO Case No. D2005-0989; *Her Majesty the Queen, in right of her Government in New Zealand v. Virtual Countries*, WIPO Case No. D2002-0754. The use of this particular phrase is owed at least in part to the possession of 'rights or legitimate interests' in the name in question being a ground of contention under the UDRP (clause 4(a)(ii)). The exclusivity of State interests in geographic names is explored in-depth in Part III, Chapter 6.

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within the general subject matter of intellectual property law as recognized in international law, or within the specific subject matter protected by trademark law.

It is a mistake to assume from the outset that all intangibles that derive value from their contribution to human culture, information or entertainment fall within the scope of what is broadly termed 'intellectual property'. Intellectual property is not a refuge for all creative or potentially profit-generating expression or innovation. While rights in certain types of names have long been recognized as 'intellectual property', this does not mean that all names are or should be characterized as such. Rather than be assumed, the obviousness or common-sense nature of an intellectual property right in geographic names should be questioned. In the context of similar assumptions about a right of publicity it has been said: 'What appears to be "common sense" may be nothing but the particular view of a matter that most strongly supports and expresses the interests of powerful social groups, or that fits most snugly with other deeply rooted and unexamined beliefs.'<sup>550</sup> So may it be for geographic names as intellectual property.

The first part of this chapter examines the scope and definitions of intellectual property. It is shown that geographic names are not expressly provided for as intellectual property subject matter save in a strictly limited context. Their inclusion as a general category of names falling within the general notion of intellectual property subject matter hinges upon States' taking the initiative to do so. The second part of this chapter explores geographic names' imperfect fit within trademark law. Even if '[m]arks indicating the geographic origin of goods were the earliest type of trademark',<sup>551</sup> trademark law (as distinguished from rights in geographical indications, which are separately recognized in international law and therefore addressed as a separate chapter of this book) has to date largely prevented geographic names from receiving protection.<sup>552</sup> It is curious, therefore, that contemporary concerns about the use of geographic names in the DNS should be primarily characterized in terms of trademark law. Conclusions as to the recognition within international law of intellectual property rights generally and trademark rights particularly in geographic names are summarized at the end of this chapter.

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550. Michael Madow, *Private Ownership of Public Image: Popular Culture and Publicity Rights*, 81 Cal. L. Rev. 127, 136 (1993).

551. Bernard O'Connor, *The law of geographical indications* 21 (Cameron May 2004), citing F. I. Schechter, *The Historical Foundation of the Law Relating to Trade-Marks* (1925). See also S.A. Diamond, *The Historical Development of Trademarks*, 73 Trademark Rep. 22 (1983); M.G. Coerper, *The Protection of Geographical Indications in the United States of America, with Particular Reference to Certification Marks*, Industrial Property July/August 1990, 232.

552. See Albrecht Conrad, *The Protection of Geographical Indications in the TRIPS Agreement*, 86 Trademark Rep. 11, 40 (1996).

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## 5.1.1 CHARACTERISTICS OF INTELLECTUAL PROPERTY AND GEOGRAPHIC NAMES

It is true that geographic names possess certain common characteristics attributed to intellectual property subject matter generally. Names, like other intellectual property subject matter, are intangible in the sense that they are merely human expression and not something that has physical embodiment, such as a house, a car, or a chair. Names are ideas that have as their raw material the human mind rather than such physical, tangible raw materials as wood, steel or clay. This is the case for all names, geographic or otherwise. Like intellectual property generally, all names are non-perishable; they will not rot or spoil if left unused and they can be used over and over again without physical depletion, damage or depreciation.

Names are also non-rivalrous resources: the use of a name by one person, like the use of language<sup>553</sup> or ideas but unlike the use of a car, plot of land or machine, does not prevent others from using it simultaneously.<sup>554</sup> While the physical materials in or onto which names are expressed are constrained by exclusivity of use (in other words, the can onto which the brand name of a soft drink is printed or a book on whose pages ideas are expressed can be exploited by only one individual at a time), the ideas themselves are not.

That said, perhaps the DNS, with its technical requirement of absolute name uniqueness, forces re-thinking this long-held belief about the nature of names as non-rivalrous resources. When they are components of a domain name, names are in fact constrained by a certain degree of exclusivity because there can only be one registrant of the name *www.myname.com*. There is no technological impediment to another party's registering the name 'myname' in another top-level domain (e.g., *www.myname.org*), but absolute name uniqueness demands simply that there cannot be more than one *www.myname.com*. In this example, the name 'myname' is not subject to exclusivity, but the complete domain name *www.myname.com* can be registered by only one registrant. In the context of the DNS, names do not entirely lose their characteristic of non-exclusivity, but they do sacrifice some of it.

Another divergence of names from the broad conceptual characteristics of intellectual property is that in order to receive protection, they need not be the product of creative genius or original thought. This is an interesting characteristic that the law has traditionally been willing to overlook in the

553. See Lawrence Lessig, *The future of ideas: the fate of the commons in a connected world* 21 n. 6 (Random House 2001).

554. On the rivalrous nature of intellectual property, see Christine Greenhalgh & Padraig Dixon, *The Economics of Intellectual Property: A review to identify themes for future research*, University of Oxford Department of Economics Discussion Paper Series No. 135, December 2002, 4-5 (available at <http://www.economics.ox.ac.uk/Research/wp/pdf/paper135.pdf>).

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case of trademarks but require in respect of other intellectual property subject matter.<sup>555</sup> Geographic names have nevertheless not historically been considered registrable as trademarks, as will be explained in detail in the next section of this chapter.

### 5.1.2 INTELLECTUAL PROPERTY SUBJECT MATTER

With the exception of geographical indications, which are a specifically defined category of origin-connoting geographic names (these are discussed in detail in Chapter 7), geographic names are not expressly stated to fall within the scope of the TRIPS Agreement's definition of 'intellectual property' in Article 1(2) as: 'all categories of intellectual property that are the subject of sections 1 through 7 of Part II.' This definition has been characterized as 'pragmatic', but it 'excludes from general TRIPS obligations forms of intellectual property (or of protection that some would consider as being a part of intellectual property) not covered by TRIPS. Certain *sui generis* or new forms of protection may be concerned.'<sup>556</sup> Geographic names generally, not simply the narrow sub-set in geographical indications, may be one such exclusion. It is also relevant to note as a tangential matter that in terms of the ownership of rights recognized under the TRIPS Agreement, governments' claims as rights holders under that agreement are not contemplated in the wording of Article 1(3) or 42.<sup>557</sup>

The interpretation of the definition of 'intellectual property' in Article 1(2) was directly at issue in the WTO dispute *United States – Section 211 Omnibus Appropriations Act of 1998*.<sup>558</sup> The Panel in that case concluded that trade names did not fall within the list of categories articulated in Article 1(2), but the Appellate Body disagreed, interpreting 'intellectual property' to

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555. See Rosemary J. Coombe, *The cultural life of intellectual properties: authorship, appropriation, and the law* 61 (Duke University Press 1998). Coombe explains: 'Although trademarks are not conventionally understood to have "authors" because they require no necessary genius, originality, or creativity, the legal recognition that trademark "owners" have a proprietary interest in marketing signs increasingly relies upon a reenactment of the author-function as described by Foucault. This is evident in judicial acceptance of the belief that through investment, labor, and strategic dissemination, the holder of a trademark creates a set of unique meanings in the minds of consumers and that this value is produced solely by the owner's efforts' (internal citations omitted).

556. Daniel Gervais, *The TRIPS Agreement: Drafting history and analysis* 166 (3d ed. revised, Sweet & Maxwell 2008).

557. Art. 1(3) of the TRIPS Agreement identifies beneficiary rights holders as 'the nationals of other Members.' Note 1 to Art. 1 indicates that 'nationals' means 'persons, natural or legal, who are domiciled or who have a real and effective industrial or commercial establishment in that customs territory.' Note 11 to Art. 42 of the TRIPS Agreement clarifies that 'federations and associations having legal standing to assert' rights are considered rights holders for the purposes of enforcement.

558. *United States – Section 211 Omnibus Appropriations Act of 1998*, 41 I.L.M. 654 (W.T.O. D.S.B. App. Body 2 Jan. 2002).

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include not only the categories indicated in each title of each Section of Part II of the TRIPS Agreement but also categories of intellectual property subject to each Section of Part II. Applying this reasoning, trade names can be distinguished because geographic names (other than geographical indications) are not even mentioned in the TRIPS Agreement. Furthermore, as the Appellate Body pointed out, trade names are expressly recognized in Article 8 of the Paris Convention for the Protection of Industrial Property, which is incorporated into the TRIPS Agreement by reference.

Geographic names, by contrast, are not expressly provided for in the Paris Convention, the definition of ‘industrial property’<sup>559</sup> in which is considered:

a traditional but not entirely exact denomination for certain exclusive rights, resembling property rights, regarding creative ideas or distinguishing signs or designations in the industrial or commercial field, supplemented by certain rules against unfair behavior in the same field. The term is inexact because ‘industrial property’ presents no more than an analogy with normal property; further, because it covers more than industrial subjects only; and, finally, because the rules against unfair behavior are not necessarily related to property at all.<sup>560</sup>

This interpretation allows for the recognition of rights in non-commercial names by the Paris Convention, but beyond their possible recognition as trademarks, geographic names fall within that agreement’s covered subject matter only insofar as they constitute indications of source or appellations of origin, or give rise to an unfair competition claim. Their ability to do this is explored in detail in Chapter 8 of this book, but at this stage it can be concluded that geographic names are not provided for as such within the protected subject matter of the Paris Convention.

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559. **Paris Convention Art. 1**

...  
(2) The protection of industrial property has as its object patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations of origin, and the repression of unfair competition.

(3) Industrial property shall be understood in the broadest sense and shall apply not only to industry and commerce proper, but likewise to agricultural and extractive industries and to all manufactured or natural products, for example, wines, grain, tobacco leaf, fruit, cattle, minerals, mineral waters, beer, flowers and flour.

...  
560. Bodenhausen, 20. See also WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications, *Report Adopted by the Standing Committee*, WIPO Doc. SCT/21/8 (26 Nov. 2009) para. 317 (comments of South Africa) (available at [http://www.wipo.int/edocs/mdocs/sct/en/sct\\_21/sct\\_21\\_8.pdf](http://www.wipo.int/edocs/mdocs/sct/en/sct_21/sct_21_8.pdf)).

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Nor do geographic names as such fall expressly within the scope of the broader definition of ‘intellectual property’ set out at Article 2 of the Convention Establishing the World Intellectual Property Organization:<sup>561</sup>

- (viii) ‘intellectual property’ shall include the rights relating to:
- literary, artistic and scientific works,
  - performances of performing artists, phonograms, and broadcasts,
  - inventions in all fields of human endeavor,
  - scientific discoveries,
  - industrial designs,
  - trademarks, service marks, and commercial names and designations,
  - protection against unfair competition,
- and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Their primarily non-commercial use separates geographic names from classification as ‘industrial’ alongside trade and service marks, while the fact that their creation requires no particularly creative or inventive thought isolates them from the other catch-all ‘intellectual’ fields.

There is therefore scant express support for a claim to rights in the nature of intellectual property in geographic names at the international level. This does not stop WTO Member States from treating geographic names as protectable intellectual property, yet for this to be considered a general principle of international law it must be relatively consistent and widespread. The most obvious means by which States might do so is through registrability as a trademark.

## 5.2 GEOGRAPHIC NAMES AS TRADEMARKS

The recognition of rights in names under international law has historically focused primarily on the intellectual property subject matter of trademarks and trade names; these have been expressly protected since 1883 by the Paris Convention on the Protection of Industrial Property (the ‘Paris Convention’). In addition to the minimum standards framework laid down in the Paris Convention, trademarks’ protection at the international level was helpfully clarified<sup>562</sup> and harmonized by the TRIPS Agreement, while administrative measures pertaining to the international recognition of rights in trademarks are provided for by the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of

561. Convention Establishing the World Intellectual Property Organization (14 Jul. 1967, entered into force 26 Apr. 1970), 828 U.N.T.S. 3.

562. See Thomas Cottier, *The Prospects for Intellectual Property in GATT*, 28 Common Mkt. L. Rev. 383, 403-404 (1991).

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Marks,<sup>563</sup> the Madrid Agreement concerning the International Registration of Marks,<sup>564</sup> the Protocol relating to the Madrid Agreement concerning the International Registration of Marks,<sup>565</sup> and the Trademark Law Treaty.<sup>566</sup>

Geographic names have long struggled to satisfy trademark registration criteria, which today are harmonized by Article 15(1) of the TRIPS Agreement:

Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular words including personal names, letters, numerals, figurative elements and combinations of colours as well as any combination of such signs, shall be eligible for registration as trademarks. Where signs are not inherently capable of distinguishing the relevant goods or services, Members may make registrability depend on distinctiveness acquired through use. Members may require, as a condition of registration, that signs be visually perceptible.

From this provision can be distilled the three fundamental requirements of trademark registrability: first, the subject matter of protection must be a sign; second, that sign must be distinctive; third, it must be used on or in connection with commercial goods or services. It is clear from the second sentence of Article 15(1) that word names fall within the meaning of the term 'sign'; this criterion has never proved an obstacle to geographic names being protected as trademarks. The remaining two criteria of trademark registrability have, however, historically been and continue to be obstacles. The reasons for this are explored in the sub-sections that follow.

### 5.2.1 THE REQUIREMENT OF DISTINCTIVENESS

The heart of a trademark's registrability lies in its capacity to distinguish the goods or services of one trader from those of another, termed 'distinctiveness'.<sup>567</sup> Article 15(1) of the TRIPS Agreement provides that protectable signs may either be 'inherently capable of distinguishing the relevant goods or services' or acquire distinctiveness through use. Inherent distinctiveness refers to whether a mark on its face indicates that the goods or services to

563. Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 Jun. 1957, as revised at Stockholm on 14 Jul. 1967 (entered into force 12 Nov. 1969), 828 U.N.T.S. 191.

564. Madrid Agreement Concerning the International Registration of Marks (14 Apr. 1891, entered into force 23 Oct. 1983) 828 U.N.T.S. 389.

565. Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (28 Jun. 1989, entered into force 1 Dec. 1995), 82 Trademark Rep. 58.

566. Trademark Law Treaty (27 Oct. 1994, entered into force 1 Aug. 1996) 2037 U.N.T.S. 35.

567. See generally, Charles Martin, *The Meaning of Distinctiveness in Trade-mark Law*, 45(5) Ill. L. Rev. 535 (1950-1951).

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which it is applied refer to those of the applicant and no one else. Acquired distinctiveness offers signs with multiple meanings an opportunity to crystallize in the mind of the consuming public the identity of the applicant in connection with the goods or services to which the sign is applied. Yet it has not always been the case that applicants have had this opportunity to demonstrate acquired distinctiveness, and this proved fatal for many applications for geographic trademarks.

Geographic names lack inherent distinctiveness because – irrespective of any other connotations a commercial enterprise might wish for them – they bring to mind a particular geographic location. Names of actual or even likely places of production, manufacture or origin of goods are unavoidably inherently descriptive of the goods they represent rather than indicative of the trader responsible for putting them on the market. This historically rendered geographic marks unregistrable.<sup>568</sup> Distinctiveness can only come about, if at all, because the consuming public learns over time to associate the geographic name in question with something other than a geographic location: specifically, a link must be made in the consumer’s mind between a geographic name and a particular trader and its particular offering of goods and/or services.

Following revisions to the Paris Convention in 1967 at Stockholm, Article 6 *quinquies* (B)(2) provided for the invalidation or refusal of registrations of marks ‘when they are devoid of any distinctive character’. This was qualified by sub-section (C)(1), which provided: ‘In determining whether a mark is eligible for protection, all the factual circumstances must be taken into consideration, particularly the length of time the mark has been in use.’ This required the consideration of circumstances in which ‘a trademark which originally was not distinctive has, in the long run, through use, acquired a “secondary meaning” which makes it distinctive.’<sup>569</sup>

Today, the opportunity provided by Article 15(1) of the TRIPS Agreement to demonstrate acquired distinctiveness makes it possible (although by no means simple) for geographic names to be registered as trademarks. A geographic name always calls to mind a geographic location and therefore leads the consumer to question whether a connotation of origin or some other connection to the geographic location is the primary message being conveyed. Still, it is open to the trader through extensive commercial use of the name in connection with particular goods or services to try to override that inherent connotation of geography and put in its place a branding-type message that brings to mind the trader and its offering. There is no guarantee that these efforts will be successful, and this helps to explain why trademarks constituted only of geographic names are not particularly

568. See Heather A. Forrest, *The new frontier: Country brands and their legal status under Australian trade mark law*, 20(3) *Austl. Intell. Prop. J.* 127, 138-140 (2009).

569. Bodenhausen, 118.

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common.<sup>570</sup> If the recent changes to Swiss trademark law<sup>571</sup> to create a new geographic type of trademark are indicative of a future general domestic law trend, then in time this will change. The practical benefits arising out of such changes to the owners of geographic marks, which include their being actionable under the UDRP and other priority rights accorded trademark holders in DNS policy, should not be underestimated.

5.2.2 THE REQUIREMENT OF USE IN CONNECTION WITH GOODS OR SERVICES

Another obstacle to geographic names' registrability as trademarks is the requirement that a sign be used on or in connection with particular goods or services. The protection of names at the level of international law has always been based upon use in a commercial context. This can be deduced from the negotiating history of the Paris Convention for the Protection of Industrial Property, which records the Chair of the convention as opening the drafting conference with reference to the scope of their work: 'Messieurs, vos études et vos recherches auront un vaste champ: brevets d'invention, dessins et modèles industriels, marques de fabrique, noms et raisons de commerce, tous seront les sujets principaux de vos entretiens.'<sup>572</sup> Indeed, the name of the resulting convention is suggestive of, even if not definitive on,<sup>573</sup> the sorts of subject matter that the convention's drafters set out to protect.

The requirement that signs be used on or in connection with particular goods or services is a logical extension of the requirement of distinctiveness, which demands recognition by the consumer of a triangular relationship between a mark, a particular trader and its particular goods or services. Registered marks receive protection only in respect of the goods or services specified in their registration, and it is principally only in connection with those goods or services that the mark's use is protected.<sup>574</sup> While geographic and cultural names can be used to identify commercial goods or services, more often they are used to identify a place or cultural concept. The

570. For specific data on the presence of geographic marks on the Australian trademarks register, for example, see Forrest, *The new frontier*.

571. Loi fédérale sur la protection des marques et des indications de provenance, nouveau Art. 27a. See detailed discussion below at Part III, Chapter 5, section 5.4.

572. Ministère des Affaires Étrangères de la France, *Conférence Internationale pour la Protection de la Propriété Industrielle* 13 (Imprimerie Nationale 1880).

573. See n. 560 above and accompanying discussion.

574. Defensive registrations and the protection of well-known marks are notable exceptions to this general rule that marks are only protected against competing use in relation to the same or similar goods and services. Arguments for treating well-known marks specially in the DNS are explored in Part II Chapter 3, section 3.2.1.3 above. The protection offered to well-known marks under international law against dilution is discussed in detail in Part III Chapter 8, section 8.2.1 below.

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commercial uses of geographic names must logically outweigh their non-commercial uses, and this is rare; most commonly, they serve an informational purpose on maps and globes, on road signs and in official documents. The infrequency with which they come to signify in the consumer's mind a link between a particular trader and its particular goods or services prevents such names not only from meeting the requirement of distinctiveness but also the requirement of use in connection with goods or services.

In the specific context of the DNS it was asked early on whether the simple act of registering a domain name constitutes commercial use. When domain name disputes began to arise, it became clear to the trademark community that the emerging activity of 'cybersquatting', the act of registering a domain name comprised or constituted of a registered mark by someone other than the mark's owner,<sup>575</sup> had to be fit into the existing rubric of trademark infringement, which requires proof of use of the allegedly infringing mark as a trademark. This then necessitates proving commercial use. In many cases, domain names comprising registered trademarks were being registered without mark owners' authorization, but the websites operated under those domain names (if any website was operated at all) were not being used to engage in commercial activity. The names were not, in other words, being used on or in connection with goods or services.

What allowed courts to find trademark infringement was where the domain name registrant offered to sell the domain name, in most cases to the trademark owner. In one of the earliest 'cybersquatting' decisions in United States courts, it was said of the defendant, Dennis Toeppen: 'At no time did Toeppen use intermatic.com in connection with the sale of any available goods or services. At no time has Toeppen advertised the intermatic.com domain name in association with any goods or services.'<sup>576</sup> It was nevertheless found that 'Toeppen's intention to arbitrage the "intermatic.com" domain name constitutes a commercial use.'<sup>577</sup> The same result could also be achieved by simply treating everything having to do with the internet as commercial in nature. This was suggested in a 1996 manual of trademark law and practice which was quoted by the court in its decision against Toeppen: 'Because Internet communications transmit instantaneously on a worldwide

575. In one of the early United States court decisions on 'cybersquatting' facts, *Avery Dennison Corp. v. Sumpton*, 999 F. Supp. 1337, 1338 (C.D. Cal. 1998) the court described the practice in question as follows: 'Like all "cybersquatters," defendants merely "squat" on their registered domain names until someone else comes along who wishes to use them. Like all "cybersquatters," defendants usurp *all* of the accepted meanings of their domain names, so as to prevent others from using the same domain names in *any* of their accepted meanings. And like all "cybersquatters," defendants seek to make a financial return by exacting a price before consenting to allow others to use the domain names on which they have chosen to "squat."' See discussion in Heather A. Forrest, *Drawing a Line in the Constitutional Sand Between Congress and the Foreign Citizen 'Cybersquatter'*, 9(2) Wm. & Mary Bill Rts J. 461, 470-472 (2001).

576. *Intermatic Inc. v. Toeppen*, 947 F. Supp. 1227, 1233 (N.D. Ill. 1996).

577. *Intermatic Inc. v. Toeppen*, 947 F. Supp., at 1239.

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basis there is little question that the “in commerce” requirement would be met in a typical Internet message, be it trademark infringement or false advertising.<sup>578</sup>

In the years since, the United States has devised specific legislative solutions such as the Anticybersquatting Consumer Protection Act to address the problem of cybersquatting and other activities characterized as DNS name-hijacking so that it is no longer necessary to fit such round peg problems into the square hole of trademark infringement. In that country and others, understanding of the internet has developed, as evidenced by the fact that not all registrations of trademarks as second-level domain names by someone other than the trademark owner are falling afoul of the UDRP, to which the majority of second-level domain registrants are bound.<sup>579</sup> It must be clarified, however, that commercial use is not a factor directly required under the UDRP as it is in trademark infringement. Offending domain name registrations under the UDRP are those that are, *inter alia*, used in bad faith pursuant to Clause 4(a)(iii). Three of the four non-exclusive examples of evidence of bad faith provided by Clause 4(b) are, however, based on commercial activity:

- (i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
- (ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.

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578. *Ibid.*, quoting Jerome Gilson, *Trademark Protection and Practice* vol. 1, § 5.11[2], 5-234 (1996).

579. See for example, *St Moritz v. StMoritz.com*, WIPO Case No. D2000-0617; *New Zealand v. Virtual Countries*, WIPO Case No. D2002-0754.

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The notion that all internet activity and therefore all uses of domain names are inherently commercial seems to have predominated.<sup>580</sup> Instances in which registration of domain names used on non-commercial, information-providing websites is deemed to constitute bad faith are not uncommon.<sup>581</sup> This is perhaps part of a broader trend in the field of intellectual property law attributable to the TRIPS Agreement and its origins in the WTO towards viewing all intellectual property subject matter as inherently commercial. In a seminal analysis of the TRIPS Agreement, only moral rights are offered as a clear example of ‘the aspects of intellectual property that are not, in one form or another “trade-related”’ and thus potentially not falling within the scope of the TRIPS Agreement.<sup>582</sup>

The international intellectual property treaty framework has historically drawn a line with respect to the recognition of rights in names between commercial and non-commercial use, those falling within the latter category being left available for public use and not subject to private property claims.<sup>583</sup> In taking the view that names in the DNS are inherently used commercially, the door is opened to proprietary claims even where names are not used on or in connection with goods or services, where they are used only in connection with the provision of information, commentary or opinion, as geographic names often are. Perhaps this is one reason to treat domain names as being a new type of property distinct from intellectual property, focusing only on the commercial interest of the subject matter in question.<sup>584</sup>

The far-reaching effects of the commercial characterization of otherwise non-commercial names are highlighted by the primarily commercial bases of rights relevant to geographic names. These are explored in particular in Chapter 8 below, but at this stage it suffices to highlight the fact that it is easier for otherwise non-commercial names such as geographic names to receive protection as trademarks where the context in which they are used is considered inherently commercial. On the other hand, if the use of geographic names is not considered inherently commercial, the protection available to them under existing intellectual property and related frameworks is automatically rendered quite limited.

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580. Commonly adopted definitions of the term ‘domain name’ underscore this. See for example, Io Montes, Doctoral Dissertation in Law, Zürich, *Legal framework for domain names* 112 (2005) (defining the term ‘domain name’ as ‘the virtual presence of a business in the on-line world that gives access to the cyber-market-place’).

581. In the context of celebrity names, for example, see Chik, 46 (observing that ‘[e]ven when [use in commerce] was “weak”, UDRP panels have largely been willing and able to find a protectable right’).

582. Gervais, 12 n. 40.

583. This concept, called the ‘public domain’, is discussed in detail in Part III, Chapter 9, section 9.2.5.2.2 below.

584. See Chik, 44.

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## 5.3 COLLECTIVE AND CERTIFICATION MARKS

The traditional obstacles to registering geographic trademarks discussed above apply to what are termed ‘standard’ trademarks. The Paris Convention recognizes in Article 7*bis* another form of mark, called a ‘collective mark’. The sole condition articulated in Article 7*bis* is that collective marks must belong to an association, but sub-paragraph (1) makes clear that associations need not ‘possess an industrial or commercial establishment.’ This has been interpreted to exclude States and other public bodies, whose marks are nevertheless likely to ‘be protected by virtue of the rule of “national treatment” embodied in Article 2 of the Convention, and ... if these marks are at the same time official State signs or hallmarks indicating control and warranty – also by Article 6*ter*.’<sup>585</sup>

The criteria of collective marks’ registrability are not harmonized by either the Paris Convention or the TRIPS Agreement to the same degree that standard trademark registration criteria are, but rather have been left to be determined by domestic legislation. Still, collective marks are a form of trademark, and as such they are required to be distinctive. This means that they must be capable of distinguishing goods or services – in this case, those of the members of an association from those of other associations. Conceptually similar to collective marks are certification marks, which connect a mark not with a particular association but with goods meeting particular, specified standards (which may, but need not, relate to geography).<sup>586</sup>

Registration of a collective or certification mark offers geographic names that communicate geographic characteristics (particularly geographic origin) distinct advantages.<sup>587</sup> Foremost, registration serves as proof of ownership just as it does for standard marks, despite the fact that ownership is an incongruous concept in this context: the association owns the mark and members of the association are authorized to use it. As such, some domestic laws prohibit or limit the transfer of collective marks.<sup>588</sup> It has also been suggested that registration may prevent a geographical indication from becoming generic.<sup>589</sup> Because they are forms of trademark, in the DNS

585. Bodenhausen, 130 (internal citations omitted).

586. See for example, Lanham Act, 15 U.S.C. §1054 (US); Trade Marks Act 1995 (Austl.) s. 169; Trade Marks Act No. 194 of 1993 (S. Africa) s. 42. On the protection of geographical indications as certification marks under US law, see Lynne Beresford, *Geographical Indications: The Current Landscape*, 17 *Fordham Intell. Prop. Media & Ent. L.J.* 979, 983-984 (2006-2007).

587. See Conrad, 21 (advocating the use of certification marks on an international level).

588. See for example, Trade Marks Act 1995 (Austl.) s. 166. On restrictions under US law, see David Snyder, *Enhanced Protections for Geographical Indications Under TRIPS: Potential Conflicts under the U.S. Constitutional and Statutory Regimes*, 18 *Fordham Intell. Prop. Media & Ent. L.J.* 1297, 1308 (2008).

589. See O’Connor, *The law of geographical indications*, 73 (citing by way of example the United States Lanham Act §1127, pursuant to which registered marks cannot be deemed generic provided the name remains geographically descriptive).

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context, collective or certification mark registration gives rise to standing to bring a claim under ICANN's Uniform Domain Name Dispute Resolution Policy (UDRP) and the new Uniform Rapid Suspension (URS) procedure, and it would also give standing to object to a new gTLD application on the basis of existing legal rights. Registration as a collective or certification mark thus has the practical effect of transforming some geographic names from a situation of no recognition in the DNS to a situation of priority recognition.

#### 5.4 GEOGRAPHIC TRADEMARKS: THE SWISS MODEL

The Swiss legislative project approved in late 2011<sup>590</sup> proposing amendments to the federal trademark law, RS 232.11 *Loi fédérale sur la protection des marques et des indications de provenance*, provides a model approach to protecting geographic names. In the new Chapter 2a, headed *Marque géographique*, nationally registered indications of source and geographical indications, protected cantonal wine designations and geographical indications regulated in a Federal Council ordinance are deemed registrable.<sup>591</sup> The geographic mark is intended to apply beyond the scope of food and beverages to manufactured goods and services. Rather than confer exclusive rights, the mark would function similar to a collective mark.

It is likely significantly easier (although by no means a non-issue) to achieve the consensus needed to amend domestic law than international law to expressly protect geographic names as trademarks. The domestic law solution removes the need for international consensus, but of course the rights created are limited to the territory in which they are recognized. This is nevertheless likely in the context of the DNS to be satisfactory as an immediate solution to the problem of unauthorized use of geographic names as domain names, since local concerns can be addressed in local law without loss of sovereignty.

This approach, if adopted by other Member States, will result in a less-harmonized global trademark law landscape. The TRIPS Agreement permits this given its nature as a minimum standards agreement that allows members to provide for higher levels of protection. The minimum standard of Article 15(1) requires that signs 'capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark.' Enabling other signs that may not be

590. L'Assemblée Fédérale, 'Loi sur la protection des marques et loi sur la protection des armoiries: Vers une réglementation différenciée', 11 Nov. 2011, <http://www.parlament.ch/f/mm/2011/pages/mm-rk-n-2011-11-11.aspx> (accessed 15 Oct. 2012).

591. RS 232.11 *Loi fédérale sur la protection des marques et des indications de provenance*, Art. 27a (nouveau), Feuille fédérale No 50, 15 Dec. 2009, at [http://www.admin.ch/ch/f/ff/2009/index0\\_50.html](http://www.admin.ch/ch/f/ff/2009/index0_50.html).

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able to meet this minimum standard to be capable of constituting a trademark provides a higher level of protection for such other signs. Further, recognition in domestic law of a specific category of geographic trademark effectively enables the recognition of geographic names beyond a country's borders through ICANN contract-based policies such as the UDRP and the new URS. Both procedures are actionable only in respect of trademarks and neither makes a distinction between types or forms of trademark.

5.5 CONCLUSIONS ON INTELLECTUAL PROPERTY RIGHTS IN GEOGRAPHIC NAMES

As the analysis of existing rights protection mechanisms undertaken in Chapter 3 reveals, there is a significant advantage to be gained in the online environment by having offline rights recognized, in particular as trademarks, given that existing rights protection mechanisms are almost exclusively based on trademark rights. Consistent with this, in ICANN's New gTLD Program, applicants of new gTLDs consisting of geographic names that are already protected in domestic trademark law are far better placed to have these rights transposed to the top-level of the DNS and resist their use by others. Achieving such protection has, however, traditionally been a difficult exercise.

While it is conceptually not implausible to associate geographic names with intellectual property generally and trademarks specifically, it should nevertheless not be assumed that geographic names fall within either of these characterizations. Geographic names share many of the traditional characteristics of intellectual property subject matter, but they are not expressly mentioned within authoritative definitions of 'intellectual property' save for the special category of geographical indications. This does not stop States from protecting geographic names within domestic intellectual property law, but neither does it require them to do so.

Geographic names are also not expressly included within the scope of registrable trademarks as harmonized by the TRIPS Agreement. Standard trademark registration criteria, in particular the requirements of distinctiveness and use in connection with goods and services, clash with the primary function of geographic names as identifying a geographic location rather than a trader and its goods or services. Distinctiveness is less problematic in relation to collective and certification marks, which require instead a link in consumers' minds between a mark, particular goods and services, and a particular association or set of characteristics rather than a particular trader. In this way, rights can be recognized in geographic names but only in the limited context of origin connotations, which may otherwise receive (as is discussed in Chapter 7) *sui generis* protection as geographical indications. Before narrowing the focus to examine the sub-set of geographic names that is geographical indications, the next chapter considers whether international law recognizes rights more broadly, in geographic names as such.

## Chapter 6

### Rights in Geographic Names as Such

This is my country  
Land of my choice  
This is my country  
Hear my proud voice. – ‘This is My Country’, American folksong, lyrics  
by Don Raye

#### 6.1 THE CHANGING USE AND REGULATION OF GEOGRAPHIC NAMES

Regulation of the use of geographic names is difficult to characterize as a purely domestic matter in the face of increasing use of geographic names as internet domain names. Prior to the introduction of the DNS, outside of the diplomatic context geographic names had a relatively limited, territory-bound scope of use that could effectively be controlled through domestic law: they appeared principally in maps, road signs and official documents, in published works such as encyclopaedias, newspaper articles, scholarly works, academic texts, and less often in advertising, trademarks and trade names. When they began to be used online, geographic names came unmoored from the territory, and thus the legal jurisdiction, that they identify. Now they are potentially registrable as domain names by anyone, anywhere. As active domain names they are potentially accessible by everyone, everywhere. Domestic legislation is ill-equipped to manage this situation.

International trademark law has also proven ill-equipped to regulate the use of geographic names, whether online or offline. As discussed in the previous chapter, geographic names have not traditionally been afforded

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trademark status due to their ordinarily non-commercial nature and, even where they are used in a commercial context, their lack of an inherent capability to link in consumers' minds the particular goods or services of one trader from those of another. It is further acknowledged by even the most ardent supporters of rights at the international level that domestic trademark legislation evidences anything but a consistent approach to recognizing trademark rights in geographic names. A recent survey shows a significant number of WIPO Member States have in place laws preventing the registration of country names as trademarks.<sup>592</sup> This speaks against the existence of a general principle of international law recognizing protection of geographic names as trademarks. Looking at these results another way, the fact that many States do allow registration of country name trademarks also weighs against the existence of a general principle of international law recognizing an exclusive right of governments to geographic names.

If international law recognizes rights in geographic names as such, it seems that it must do so outside of trademark law. Nevertheless, most efforts to date regarding the recognition of rights, at least in respect of country names, have been directed at interpretations of or amendments to Article 6ter of the Paris Convention for the Protection of Industrial Property. That Article 'concerns *trademarks*, but its purpose is not to regulate their *protection as subjects of industrial property* but rather to *exclude them from becoming such subjects* in certain circumstances.'<sup>593</sup> From its proscription against 'use, without authorization by the competent authorities' is derived the position that their unavailability for registration by the public as trademarks equates to country names belonging exclusively to the State they identify. Yet WIPO has interpreted Article 6ter as not pertaining to country names, leading to the conclusion that their use in the DNS cannot be prevented under that Article.<sup>594</sup>

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592. WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications, *Summary of the Replies to the Questionnaire Concerning the Protection of Names of States against Registration and Use as Trademarks*, WIPO Doc. SCT/24/6 (14 Feb. 2011) (available at [http://www.wipo.int/edocs/mdocs/sct/en/sct\\_24/sct\\_24\\_6.pdf](http://www.wipo.int/edocs/mdocs/sct/en/sct_24/sct_24_6.pdf)). For an example at the supra-national level, see First Directive 89/104/EEC of the Council, of 21 Dec. 1988, to approximate the laws of the Member States relating to Trade Marks, OJ/L 40 of 11 Feb. 1989, p.1., which provides at Art. 3(2)(b) and (c) for refusal on grounds of 'high symbolic value' or inclusion of 'badges, emblems and escutcheons other than those covered by Art. 6ter of the Paris Convention and which are of Public interest, unless the consent of the appropriate authorities to its registration has been given in conformity with the legislation of the Member State'. Another example is the Protocol on Harmonization of Norms on Intellectual Property in Mercosur in matters of Trademarks, Indications of Source and Appellations of Origin (5 Aug. 1995, entered into force 6 Aug. 2000), 2145 U.N.T.S. 40. Art. 9(2) of the Protocol requires that Member States prohibit the registration of signs that, *inter alia*, 'are formed with national symbols or symbols of any country; signs that are susceptible of falsely suggestion a relation with ... national symbols of any country, or that offend their value or respectability.'

593. Bodenhausen, 95 (emphasis in original).

594. See WIPO, *WIPO II Report*, para. 284.

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Others have lent support to this conclusion,<sup>595</sup> but practice in notification of Article 6*ter* emblems in the time since the WIPO II Report warrants reconsideration of this issue. Because Article 6*ter* has featured so strongly in the discussion as the most likely source of rights in country names as such, it features first in this chapter.

Looking beyond international intellectual property law as a basis of rights in geographic names as such, this chapter also addresses the situation of States' claims to exclusionary rights in country names being articulated on the basis of sovereignty, as if possession of a State's name is linked to the status of statehood. Indeed, the rights conferred by Article 6*ter* of the Paris Convention are said to be directed at 'emblems constituting the symbol of the sovereignty of a State.'<sup>596</sup> Section 6.3 of this chapter considers the possible link between country names, sovereignty and statehood to determine whether claims to rights on this basis are supported by international law. Two separate questions are asked: first, whether having a name is a condition of statehood and second, whether having a name is a right of statehood. The limits of sovereignty are explored to delineate the authority of a State to select and use a name and interfere with others' selection and use of a name. Conclusions as to the existence under international law of rights in geographic names as such are summarized at the end of this chapter.

## 6.2 PARIS CONVENTION ARTICLE 6*TER* AND COUNTRY NAMES

### 6.2.1 ARTICLE 6*TER* (1)

#### 6.2.1.1 Interpretation

The protection of country names under Article 6*ter* of the Paris Convention hinges upon the difference in wording between sub-sections (1)(a) and (1)(b)<sup>597</sup> of that Article. Article 6*ter* (1)(a) requires that Paris Union members

595. See for example, Froomkin, *When We Say US<sup>TM</sup>, We Mean It!*; Mueller, *Governments and Country Names*.

596. See WIPO, *General information on Article 6*ter**, [http://www.wipo.int/article6ter/en/general\\_info.htm](http://www.wipo.int/article6ter/en/general_info.htm) (accessed 15 Oct. 2012).

597. **Paris Convention Art. 6*ter***

(1)(a) The countries of the Union agree to refuse or to invalidate the registration, and to prohibit by appropriate measures the use, without authorization by the competent authorities, either as trademarks or as elements of trademarks, of armorial bearings, flags, and other state emblems, of the countries of the Union, official signs and hallmarks indicating control and warranty adopted by them, and any imitation from a heraldic point of view.

(b) The provisions of subparagraph (a), above, shall apply equally to armorial bearings, flags, other emblems, abbreviations, and names, of international intergovernmental

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prohibit registration as a trademark of emblems of national significance such as armorial bearings and national flags. Article 6ter (1)(b) contains a similar proscription in relation to IGOs except that it also expressly excludes the names of such organizations from trademark registration. This serves to highlight the absence of States' names in the wording of sub-section (1)(a).<sup>598</sup> Relying on the principle of *expressio unius exclusio alterius*, WIPO has interpreted this subtle yet significant difference as not requiring that Member States exclude country names from registration as trademarks.<sup>599</sup> This interpretation is consistent with:

the duty of a treaty interpreter to examine the words of the treaty to determine the intentions of the parties. This should be done in accordance with the principles of treaty interpretation set out in Article 31 of the Vienna Convention. But these principles of interpretation neither require nor condone the imputation into a treaty of words that are not there or the importation into a treaty of concepts that were not intended.<sup>600</sup>

Interpretations of the terms 'armorial bearings', 'other State emblems', 'official signs and hallmarks indicating control and warranty', and 'heraldic symbols' as including country names have been rejected. South Africa was an enthusiastic proponent of this interpretation, but the remark that this 'view has not been universally and definitely accepted'<sup>601</sup> suggests rather more support than may actually exist and conflicts with the acknowledgement made elsewhere that:

other members of the Paris Union had made very laudable efforts at ensuring protection against the use of official State names as elements of

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organizations of which one or more countries of the Union are members, with the exception of armorial bearings, flags, other emblems, abbreviations, and names, that are already the subject of international agreements in force, intended to ensure their protection. (emphasis added)

598. See WIPO, *WIPO II Report*, paras 278-285. See also Bodenhausen, 94-99.

599. WIPO, *WIPO II Report*, para. 281.

600. *India – Patent Protection for Pharmaceuticals and Agricultural Chemical Products*, WT/DSS0/AB/R (W.T.O. App. Body Report 19 Dec. 1997). See also Susy Frankel, *WTO Application of 'the Customary Rules of Interpretation of Public International Law' to Intellectual Property*, 46 Va. J. Int'l L. 365, 388-389 (2005-2006). An alternative interpretation of Art. 6ter (1) is defended by Matthew Rimmer in *Virtual Countries: Internet Domain Names and Geographical Terms*, February 2003 Media Int'l Austl. Incorp. Culture & Pol'y 124, 132 (2003). Rimmer posits that an alternate interpretation of Art. 6ter 'is justified, on the one hand, in light of its spirit and underlying objectives, and, on the other hand, in view of recent technological evolutions, in particular the emergence of the Internet as a commercial medium and the importance of domain names as valuable signposts in this context.'

601. WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications, *The Protection of Country Names in the Domain Name System: Comments Submitted by the Government of the Republic of South Africa*, WIPO Doc. SCT/S2/6 (17 May 2002) (available at [www.wipo.int/edocs/mdocs/sct/en/sct\\_s2/sct\\_s2\\_6.doc](http://www.wipo.int/edocs/mdocs/sct/en/sct_s2/sct_s2_6.doc)).

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trademarks, where such use constituted grounds for refusal of requests for trademark protection. However, the continued prevalence of such use in other countries provided clear evidence of the inconsistency of the efforts to provide protection to official State names.<sup>602</sup>

The ‘prevalence of such use’ offers support for WIPO’s interpretation of Article 6*ter* (1)(a), as do attempts prior and subsequent to the WIPO II Report to revise this article to expressly include country names.

### 6.2.1.2 Proposed Revisions

A proposal<sup>603</sup> to revise Article 6*ter* (1)(a) to include country names as part of the 1980 Diplomatic Conference for the Review of the Paris Convention, though adopted,<sup>604</sup> did not ultimately result in amendments. This signifies an understanding amongst WIPO States that, at that time, country names were not included in the scope of Article 6*ter*. At the same time, this evidences a desire to achieve such an outcome by creating new law. The question thus arises as to the current legal significance of that previous state of affairs; despite the failure to achieve codification then, has new law since been created? Renewals of the effort to amend Article 6*ter* (1)(a) by the Jamaican delegation to WIPO’s Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (the ‘WIPO Standing Committee’) offer insight. The Jamaican delegation’s proposal notably goes beyond the earlier attempt at revising Article 6*ter*, in that it seeks to impose a government consent requirement upon all applications for trademarks of official country names and homonymous representations of official names.<sup>605</sup>

It is clear from the Jamaican delegation’s remarks that it is believed as a starting point that new law is needed to protect country names.<sup>606</sup> From this

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602. WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications, *Report Adopted by the Standing Committee*, WIPO Doc. SCT/21/8, para. 309.

603. See WIPO, *WIPO II Report*, paras 281-283 (discussing WIPO, *Basic Proposals (Supplement to Document PR/DC/3), Memorandum by the Director-General*). See also WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications, *Submission by the Russian Federation*, WIPO Doc. SCT/21/5 Annex 1, para. 1 (2 Mar. 2009) (available at [http://www.wipo.int/edocs/mdocs/sct/en/sct\\_21/sct\\_21\\_5.pdf](http://www.wipo.int/edocs/mdocs/sct/en/sct_21/sct_21_5.pdf)).

604. See WIPO, *Diplomatic Conference on the Revision of the Paris Convention*, WIPO Doc. PR/SM/9, discussed in WIPO, *WIPO II Report*, para. 282.

605. WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications, *Proposal by Jamaica*, WIPO Doc. SCT/21/6 (30 Mar. 2009) (available at [http://www.wipo.int/edocs/mdocs/sct/en/sct\\_21/sct\\_21\\_6.pdf](http://www.wipo.int/edocs/mdocs/sct/en/sct_21/sct_21_6.pdf)).

606. WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications, *Report Adopted by the Standing Committee*, WIPO Doc. SCT/21/8, para. 309 (reporting the Jamaican delegation as speaking to ‘the clear absence of provisions specifically prohibiting the use of official State names’ and the proposed amendment to Art. 6*ter* being ‘not only warranted, but timely’). A finding of *opinio juris*

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can be extrapolated the view that protection is not already extant. With the exceptions of the delegations of Brazil and Austria, who expressed the view that Article 6ter offers sufficient protection to country names,<sup>607</sup> other members of the WIPO Standing Committee voiced no specific opposition to Jamaica's assessment. This can be interpreted as evidence of a general belief among members of the WIPO Standing Committee that international law on this issue does not yet exist, though it bears noting that not all members commented, nor was a vote on this specific point taken, nor was this issue debated in the General Assembly.

On the specifics of Jamaican delegation's proposed amendments to Article 6ter, members were more divided. The delegations of Iran (paragraph 312), Cuba (paragraph 314), Spain (paragraph 316), Greece (paragraph 325), Serbia (paragraph 328), Kenya (paragraph 329) and India (paragraph 332) expressed support.<sup>608</sup> The delegations of Colombia (paragraph 313), Australia (paragraph 315), South Africa (paragraph 317) and Germany (paragraph 318) expressed non-support.<sup>609</sup> In light of this it was decided<sup>610</sup> that the next step would be information-gathering through the drafting and circulation of a questionnaire<sup>611</sup> of members' domestic laws restricting the registration and use of country names (specified to include official State names, short-form names, common use names, translations, transliterations and adjectival use) as trademarks.

Responses to this questionnaire evidence a lack of consistency in the exclusion of country names from registration and use as a trademark, with a near 60/40 split.<sup>612</sup> That so many Member States responded in the negative to having in place limitations on country names – through trademark law,

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as to existing customary law cannot be based upon such forward-looking assertions: Michael Akehurst, *Custom as a source of international law*, 47 British Y.B. Int'l Law 1, 37 (1974-1975).

607. WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications, *Report Adopted by the Standing Committee*, WIPO Doc. SCT/21/8, para. 320 (comments of Brazil that it 'believed that the existing legal framework established under the Paris Convention and the TRIPS Agreement already provided enough grounds for the protection of State names') and para. 323 (comments of Austria that it saw 'no need to amend Article 6ter, the existing legal framework being sufficient to protect State names').
608. *Ibid.*, para. 309.
609. *Ibid.*, paras 308-343 (comments by Austria, Australia, Brazil, Colombia, Denmark, Germany, and the Republic of Korea).
610. *Ibid.*, para. 343.
611. See WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications, *Draft Questionnaire Concerning the Protection of Names of States Against Registration and Use as Trademarks*, WIPO Doc. SCT/23/4 (15 Feb. 2010) (available at [http://www.wipo.int/edocs/mdocs/slt/en/sct\\_23/sct\\_23\\_4.pdf](http://www.wipo.int/edocs/mdocs/slt/en/sct_23/sct_23_4.pdf)).
612. The results broadly found that 61% of survey respondents exclude country names from registration and 42% from use as trademarks for goods. In addition, 64% of survey respondents exclude country names from registration and 41% from use as trademarks for services.

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unfair competition law, general tort law or otherwise – supports the non-existence at this time of protection through Article 6ter (1)(a) for country names. This also weighs against the existence of a general principle of international law of exclusive State control or ownership of country names. The revised proposal submitted by Jamaica, which takes into consideration the survey responses, acknowledges this lack of consistency. Jamaica (joined by Barbados) proposes that ‘there could be convergence among Members on an agreed approach to the protection of country names in the trademark/IP system having regard to differences that now exist in the protection afforded to country names across Member States.’<sup>613</sup>

As to those States that have opted to exclude country names from trademark registration, this is not prohibited under the Paris Convention, but also not something they are obliged by that instrument or otherwise to do. The case studies submitted to the Standing Committee by Jamaica, Lithuania, Mexico, Poland, Republic of Moldova, Turkey, Uganda and the United States<sup>614</sup> evidence the varied ways in which countries which have opted to protect country names do so. A WIPO-developed ‘nation branding tool’ intended to guide Member States in developing a nation branding strategy and inform them of the role of country names within that strategy is projected to be published in late 2012.<sup>615</sup>

It is interesting to note the resemblance between Jamaica’s proposal to restrict country names from registration as a trademark without government consent and the recommendation of the Governmental Advisory Committee (GAC) to ICANN to restrict creation of geographic new gTLDs without government consent. As to why the consent mechanism has come to be included in the *gTLD Applicant Guidebook* (and in less time) but not yet the Paris Convention, certain distinctions can be made. First, as new gTLD policy was being drafted, there was only one geographic gTLD already in existence: .asia. The *gTLD Applicant Guidebook*’s imposition of a policy of exclusion of country and territory name new gTLDs and consent to geographic new gTLDs does not threaten the viability of vast numbers of existing registrations in the way that existing trademarks would be threatened

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613. WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications, *Proposal by the Delegations of Barbados and Jamaica*, WIPO Doc. SCT/27/6 para. 8 (18 Jun. 2012) (available at [http://www.wipo.int/edocs/mdocs/sct/en/sct\\_27/sct\\_27\\_6.pdf](http://www.wipo.int/edocs/mdocs/sct/en/sct_27/sct_27_6.pdf)).

614. Case studies are accessible through the Standing Committee’s electronic forum. See WIPO, *Browse Comments: 2012 Country Names*, <http://www.wipo.int/sct/en/comments/> (accessed 15 Oct. 2012). See also WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications, *Information on Cases and Case Studies Relevant to the Protection of Names of States and on Nation Branding Schemes*, WIPO Doc. SCT/27/5, (18 Jul. 2012) (available at [http://www.wipo.int/edocs/mdocs/sct/en/sct\\_27/sct\\_27\\_5.pdf](http://www.wipo.int/edocs/mdocs/sct/en/sct_27/sct_27_5.pdf)) (hereinafter ‘*Information on Cases and Case Studies*’).

615. See WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications, *Information on Cases and Case Studies*.

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by such a change.<sup>616</sup> It is worth noting, however, that had the *gTLD Applicant Guidebook* restrictions on geographic strings applied at the time that the .asia gTLD was created, the application would have been rejected as an application for the name of a macro-geographical (continental) region unless it secured authorization from the relevant governments throughout that region.<sup>617</sup>

Context is a second major difference: the GAC is an advisory body within ICANN of representatives who provide advice to a private corporation's Board of Directors. The WIPO Standing Committee, by contrast, is an advisory body within a United Nations specialist agency. There is the obvious difference (discussed in Chapter 4, above, in the context of non-State actors in the DNS norm-setting environment) in terms of the law-making capacity of WIPO and ICANN; the potential for actions of the former to create binding legal obligations may serve as a disincentive to taking decisive action, while no such obligations are created by GAC advice. Different membership, voting procedures, expertise of participants, and the relative ability of what may be perceived as stronger or weaker members to influence or drive the recommendation-making process may also contribute to different outcomes.<sup>618</sup>

A further distinction can potentially be made as to the intended consequence of restrictions on geographic names from registration as trademarks or gTLDs. The Jamaican delegation has curiously stated that 'the intention of [its] proposal was not to create proprietary rights for States but rather to prevent unauthorized use of its name by individuals and companies.'<sup>619</sup> It is not clear how giving States the exclusive authority to prevent others' registration and use as a trademark of country names by means of a consent requirement underpinned by Article 6ter does not, by conventional understanding, equate to a property-type right in the name as such. WIPO's own articulation of the purpose of Article 6ter as being 'to

616. See Mueller, *Governments and Country Names*, 10 (positing that 'WIPO's caution was prodded in part by business trademark holders concerned about the potential confusion, and possible erosion of their rights, that might be caused by proliferating claims to names by governments, regions, and administrative entities').

617. See ICANN, *gTLD Applicant Guidebook*, section 2.2.4.1.2 (4) (referring to the UN's 'Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings' list, at <http://unstats.un.org/unsd/methods/m49/m49regin.htm>).

618. It has been suggested that both ICANN and WIPO suffer from sporadic attendance at meetings, particularly as regards developing country members, and this may have an impact on voting outcomes for both. On WIPO, see Coenraad Visser, *International intellectual property norm setting: Democratizing the World Intellectual Property Organization?*, 32 S. Afr. Y.B. Int'l L. 222, 223-224 (2007). On the GAC, see Froomkin, *When We Say US<sup>TM</sup>, We Mean It!*, 865-866.

619. WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications, *Report Adopted by the Standing Committee*, WIPO Doc. SCT/21/8, para. 311.

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protect<sup>620</sup> emblems falling within its scope is indicative of a proprietary-type right in the name as such rather than a non-proprietary limitation on the behaviour of others through, for example, consumer protection or unfair competition laws. Other provisions of the Paris Convention than *6ter* are directed at behavioural limitations;<sup>621</sup> if the intention were to restrict use that is likely to confuse, amendment to Article *6ter* should not be necessary. By contrast, no such denial has been expressed in the context of ICANN's exclusion/authorization mechanism for geographic new gTLDs. One gets the sense from GAC members' comments that the exclusion/authorization mechanism is driven by a desire to exert control of a proprietary nature over geographic names at the very least in order to prevent the creation of property or other rights belonging to others.

In summary, the prevailing view is that Article *6ter* does not require States to prevent the registration of country names as trademarks. Yet neither does that Article or other provisions of the Paris Convention prevent States from excluding country names from trademark registration on their own initiative. A survey of WIPO members' domestic law reveals a mixed practice in this regard, lending current support to WIPO's interpretation of Article *6ter* (1)(a) as not encompassing a right to protect country names. It further lends support to the non-existence of a general principle of international law of excluding country names from trademark registration and by corollary, to the non-existence of a general principle of international law of recognizing exclusivity of States' rights in country names.

6.2.2 ARTICLE *6TER* (3): INTERPRETATION

In order to facilitate the exclusion of national emblems from national trademark registers, Paris Convention Article *6ter* (3) establishes a notice system whereby WIPO Member States communicate their national emblems to other members of the Union.<sup>622</sup> Communications pursuant to this provision are made by completing a 'Draft Request for Communication Under Article *6ter* 3(a) of the Paris Convention for the Protection of

620. WIPO, *Article 6ter of the Paris Convention: Protection of State Emblems, and Names, Abbreviations and Emblems of International Intergovernmental Organizations*, <http://www.wipo.int/article6ter/en/> (accessed 15 Oct. 2012).

621. Unfair competition and related laws limiting commercial behaviour are the focus of Chapter 8.

622. **Paris Convention Art. *6ter***

(3)(a) For the application of these provisions, the countries of the Union agree to communicate reciprocally, through the intermediary of the International Bureau, the list of State emblems, and official signs and hallmarks indicating control and warranty, which they desire, or may hereafter desire, to place wholly or within certain limits under the protection of this Article, and all subsequent modifications of such list. Each country of the Union shall in due course make available to the public the lists so communicated. Nevertheless such communication is not obligatory in respect of flags of States.

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Industrial Property by a State'.<sup>623</sup> Consistent with the prevailing interpretation of Article 6ter (1)(a) just discussed, the request form does not invite notification of country names.<sup>624</sup> Notable, therefore, are the notifications made in 2008 by Iceland of its name in the English, Spanish/Castilian, French, Chinese, Arabic and Russian languages as State emblems.<sup>625</sup> The legal significance of Iceland's actions is ripe for consideration in light of the conclusions reached above as to the non-support of Article 6ter for encompassing country names.

Iceland's actions could only be supported by a restrictive interpretation of Article 6ter 3(a) (and thus Article 6ter (1)(a)) giving 'extreme deference to the sovereignty of states'.<sup>626</sup> The actual use of the restrictive approach by the PCIJ and ICJ is, however, limited and on this and other bases its use has been cautioned against.<sup>627</sup> Furthermore, the United States is recorded as having objected to Iceland's notifications.<sup>628</sup> Given that it is the only State to have done so, it could be questioned whether this signals tacit acceptance by other States. This is unlikely given that other States have not availed themselves of the notification process to notify State name-only emblems, although notifications have been made in which a country name is the prominent feature with the addition of a small emblem or sign.<sup>629</sup> These have essentially the same effect as name-only notifications because notified emblems 'are protected ... against registration and use of trademarks which are identical to them *or incorporate them as elements thereof*'<sup>630</sup> (emphasis added). They function as stylized marks, however, and do not unambiguously

623. WIPO, *Procedure to be Followed by States Wishing to Avail Themselves of Article 6ter of the Paris Convention for the Protection of Industrial Property*, <http://www.wipo.int/article6ter/en/states.htm> (accessed 15 Oct. 2012).

624. The notification provides: 'On behalf of the Government of [official name of the country], I would like to request the communication, under Article 6ter(3)(a) of the Paris Convention for the Protection of Industrial Property (Paris Convention), to the States party to the Paris Convention and to the Members of the World Trade Organization (WTO) not party to the said Convention, of the [armorial bearings], [flag], [State emblem] and/or [official sign or hallmark indicating control and warranty] adopted by [official name of the country].'

625. Art. 6ter Numbers IS8, IS9, IS10, IS11, IS12 and IS13, Notified as State Emblems in Circular Number 7596, 02 Apr. 2008, available at WIPO, *Article 6ter Structured Search*, <http://www.wipo.int/ipdl/en/6ter/> (accessed 15 Oct. 2012).

626. Richard K. Gardiner, *Treaty Interpretation* 53 (Oxford University Press 2008).

627. See Hersch Lauterpacht, *Restrictive Interpretation and the Principle of Effectiveness in the Interpretation of Treaties*, XXVI British Y.B. Int'l L. 48, 62-67 (1949), discussed in Gardiner, *Treaty Interpretation*, 60-62.

628. Objections by the United States are recorded as having been made on 30 Mar. 2009 for each of Art. 6ter notification Numbers IS8, IS9, IS10, IS11, IS12 and IS13. Available at WIPO, *Article 6ter Structured Search*, <http://www.wipo.int/ipdl/en/6ter/> (accessed 15 Oct. 2012).

629. An example is Canada's notification of State emblem CA16, available at WIPO, *Article 6ter Structured Search*, <http://www.wipo.int/ipdl/en/6ter/> (accessed 15 Oct. 2012).

630. Bodenhausen, 97.

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evidence an intention to reserve a country name as the notification of an unstylized name only.

Looking beyond treaty obligations to the formation of custom, although practice by the entire international community of States is generally not seen as required, and although it may even in certain situations be considered sufficient that only a minority of States have acted in a particular way,<sup>631</sup> it is surely the case that the action of one State is insufficient evidence of a general or even specific custom of recognizing rights in country names through Article 6*ter* (3). Only if other States were doing so and these notifications consistently went unchallenged, and further if these actions were the product a sense of legal obligation and not simply diplomatic courtesy, could this be a basis for customary law recognizing States' rights in country names.

At this time, Iceland's appears the only example of notification under Article 6*ter* (3) of a State emblem featuring only a country name. One reason for the isolation of this practice may be that States believe it too obvious to bother with an administrative process of notifying a desire to protect a name that they view as indisputably their own. Could it be that country names are so well-known that communication of an intention to assert exclusivity in them would be considered unnecessary because it is so obvious? Such a position is not so illogical when one considers that national flags have been exempt from the process of Article 6*ter* notification since the 1958 Lisbon Conference of the Paris Union for precisely this reason.<sup>632</sup> It would likewise not be unreasonable to suggest that in the modern world order, countries' names are just as, if not even more well-known than their flags. Perhaps the very obviousness of the ownership of both belies not merely a desire to preserve friendly relations but the observance of a legal obligation. Then again, the opposite may be true, where 'the absence of legal obligation *in such a context* is regarded as self-evident, just as, in municipal law, questions of good manners are treated as self-evidently not a matter for legal regulation.'<sup>633</sup>

Article 6*ter* (3)(a) of the Paris Convention expressly accommodates the fact that a flag so obviously belongs to the State that adopts it that the adopting State need not tell other States that it wishes to prevent its use or registration as a trademark.<sup>634</sup> This reasoning depends on an understanding

631. See Vladimir Duro Degan, *Sources of International Law* 182, Martinus Nijhoff 1997.

632. See Gervais, 503 n. 819, citing Bodenhausen, *Guide to the Application of the Paris Convention*, 100.

633. International Law Association, *Statement of Principles Applicable to the Formation of General Customary International Law: Final Report of the Committee on Formation of Customary (General) International Law*, section 17(i) Commentary.

634. **Art. 6*ter* (3)(a):** For the application of these provisions, the countries of the Union agree to communicate reciprocally, through the intermediary of the International Bureau, the list of State emblems, and official signs and hallmarks indicating control and warranty, which they desire, or may hereafter desire, to place wholly or within certain limits under

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that a flag, once adopted, is assumed to be easily and immediately identifiable as a particular State's own, not only by other heads of State and the diplomatic community but by people all over the world near or far from the State in question who would otherwise have contact with the flag if used as a trademark. Exclusion of flags from registration as a trademark is justified because their 'registration or use would violate the right of the State to control the use of symbols of its sovereignty'.<sup>635</sup> Yet are not country names symbols of sovereignty just as much as, if not more so than, flags? If so, is there a custom or general principle of international law recognizing States' rights in country names, even if the Paris Convention does not explicitly require this? To answer this question, this study now turns to a fundamental principle of international law that is the cornerstone of the international legal order itself: sovereignty.

### 6.3 SOVEREIGNTY AND COUNTRY NAMES

Both the proposal made by the Jamaican delegation to the WIPO Standing Committee to expand the scope of Paris Convention Article 6ter (1) and the recommendation made by ICANN's GAC to limit applications for new geographic gTLDs rely on sovereignty to justify restricting others' use of country names.<sup>636</sup> Sovereignty has also been asserted as a basis for national control of country code top-level domains.<sup>637</sup> Acknowledging the imprecision with which the term 'sovereignty' is used, as will be discussed further below, the impression one gets is that these are assertions of an inherent right of States to possess and control the use of their representative symbols, including their name. The seemingly inherent nature of the right suggests that it is derived from principles of natural law and the very conceptual and philosophical underpinnings of the international legal order. This is at least

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the protection of this Article, and all subsequent modifications of such list. Each country of the Union shall in due course make available to the public the lists so communicated. *Nevertheless such communication is not obligatory in respect of flags of States.* (emphasis added)

635. Bodenhausen, 96.

636. See comments of the Delegation of Jamaica 'that its proposal was intended to protect the integrity and sovereignty of a State' in WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications, *Report Adopted by the Standing Committee*, WIPO Doc. SCT/21/8 (26 Nov. 2009) para. 311. The GAC's view is expressed in the context of Internationalized Domain Names (IDNs) that 'ICANN should consult with the Government or relevant public authority of the territory concerned to determine whether there may be any potential infringement of their sovereign rights regarding their country or territory name'. GAC, *GAC Communiqué: New Delhi, 2*, <https://gacweb.icann.org/display/gacweb/GAC+31+Meeting+New+Delhi+%2C+India+9-14+February+2008> (February 2008, accessed 15 Oct. 2012).

637. See Von Arx & Hagen, 68.

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how the protection of State emblems by means of Article 6<sup>ter</sup> of the Paris Convention has been explained.<sup>638</sup>

Even if the protection of State emblems has as its origin the principle of sovereignty, one need look no further than the Paris Convention in order to identify international law expressly recognizing States' rights. It has been determined in the preceding section of this chapter that country names do not fall within this ambit; they are not specifically recognized in the Paris Convention or indeed any other international convention of universal scope as symbols of sovereignty meriting protection as such by means of an exclusion from trademark registration or other form of proprietary rights. States' names are nevertheless just as powerful and likely more universally recognizable identifiers than flags or other national symbols. The question therefore arises as to whether possession and protection of States' rights in their names can alternatively be based on the status of statehood, either as a condition of statehood or a consequence of it.

Various sources identify a link between national flags as expressions or 'emblems' of sovereignty and national identity,<sup>639</sup> but less clearly articulated is a link between country names and sovereignty. If it were clear that sovereignty encompasses a right to possess and prevent others' use of a name, the issue of States' rights in country names would not be the open question that it is today. An answer can only be reached by piecing together historical and contemporary understandings of statehood in order to demarcate the legal connection, if any, between sovereignty, statehood and country name. This section of this chapter considers first whether having a name is a condition of statehood, and second, whether having a name is a right of statehood.

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638. See Bodenhausen, 96.

639. See *for example*, Am. Jur. 2d *Flag* §1 ('A national or state flag is an emblem of that nation or state's sovereignty and authority.');

Michael Billig, *Banal Nationalism* 40-41 (Sage Publications 1995) (discussing the powerful impact of even unwaved flags as symbols of nationality and nationhood); Arundhati Virmani, *National Symbols Under Colonial Domination: The nationalization of the Indian flag, March-August 1923*, 164 *Past & Present* 169 (1999); Yael Navaro-Yashin, *Confinement and the Imagination: Sovereignty and Subjectivity in a Quasi-State*, in *Sovereign bodies: citizens, migrants and states in the postcolonial world* 103-104 (Thomas Blom Hansen & Finn Stepputat eds., Princeton University Press 2005) (discussing the importance of the flag of the Turkish Republic of Northern Cyprus to its sovereignty); *Sovereignty flag should fly, says Maori Party*, *nzherald.co.nz* (31 Jan. 2007) (available at [http://www.nzherald.co.nz/waitangi-day/news/article.cfm?c\\_id=1500878&objectid=10421769](http://www.nzherald.co.nz/waitangi-day/news/article.cfm?c_id=1500878&objectid=10421769)).

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### 6.3.1 NAME AS A CONDITION OF STATEHOOD

#### 6.3.1.1 Statehood and Possession of a Name

Foundational historical works on sovereignty and statehood offer little support for the position that statehood is conditioned on having a name. For example, Emerich de Vattel, whose seminal work *Le Droit des gens; ou, Principes de la loi naturelle appliqués à la conduite et aux affaires des nations et des souverains* is considered one of the foundations of modern nation-State theory, saw only self-government as necessary.<sup>640</sup> Yet where specific territories are identified as having achieved the status of sovereign statehood, they are commonly referred to by name. For example, Franciscus de Vittoria, another influential early contributor to international legal theory, described a ‘perfect State’ as ‘one which is complete in itself, that is, which is not a part of another community, but has its own laws and its own council and its own magistrates, such as is the Kingdom of Castille and Aragon and the Republic of Venice and the like’.<sup>641</sup> Little can be drawn from this, however, because the examples to which Vittoria points are States in possession of a name rather than States lacking names. The latter situation is not contemplated.

Contemporary scholars have experienced difficulty in articulating a definition or identifying attributes of statehood. This is at least partly due to the traditionally complex question of the need for recognition; that issue<sup>642</sup> must be set aside as separate from a possible link between statehood and country name.<sup>643</sup> The definition of ‘State’ provided by Article 3 of the Montevideo Convention on Rights and Duties of States<sup>644</sup> (hereinafter the ‘Montevideo Convention’) is viewed as setting the standard despite that convention being a regional agreement only.<sup>645</sup> From it can be extrapolated

640. Emerich de Vattel, *Le Droit des Gens, ou Principes de la loi Naturelle, Appliqués à la conduite aux affaires des Nations et des Souverains*, vol. 1 Introduction, Bk I, ch I, §4 (1758).

641. Franciscus de Vittoria, *De Indis et de Iure Belli Relectiones*, in *Relectiones Theologicae XII* (Ernest Nys ed.), reprinted in *The Classics of International Law* 169 para. 7 §§425-426 (James Brown ed., 1917).

642. On recognition, see James Crawford, *The creation of states in international law* 38, 89-95 (2d ed., Clarendon Press 2007).

643. See Matthew C. R. Craven, *What's in a Name? The Former Yugoslav Republic of Macedonia and Issues of Statehood*, 16 *Austl. Y.B. Int'l L.* 199, 238 (1995) (arguing that a link between name choice and recognition ‘offends the notion of sovereignty itself’). See also Louis Henkin et al., *International Law: Cases and Materials* 253 (3d ed., West 1993).

644. Convention on Rights and Duties of States adopted by the Seventh International Conference of American States (26 Dec. 1933, entered into force 26 Dec. 1934), 165 *L.N.T.S.* 19.

645. The definition of ‘State’ in the Restatement (Third) of Foreign Relations Law of the United States almost precisely mirrors that of the Montevideo Convention, and in comments to the Restatement it is said that this definition ‘is well-established in international law’. See *Restatement (Third) of the Foreign Relations Law of the United*

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four principal criteria: a permanent population; a defined territory; government; and capacity to enter into relations with other States.<sup>646</sup> Clearly, possession of a name is not one of these four criteria. Nor is it one of the other criteria that have been suggested over time, including permanence, willingness and ability to observe international law, civilization, and legal order.<sup>647</sup> The requirements of membership in the United Nations are based first and foremost on having achieved statehood, but even these do not expressly require that aspiring members have a name.<sup>648</sup>

It is only plausible to take the position that possession of a name is a condition of statehood if it can be said that having a name, while not an express criterion of statehood, is a necessary or inherent aspect of a criterion of statehood. Considering in turn the four criteria identified by the Montevideo Convention as just noted, it could only be possible to interpret possession of a name as a necessary aspect of having the capacity to enter into relations with other States; the crux of this argument is that having a name is a necessary aspect of legal personality.<sup>649</sup> This will now be considered.

### 6.3.1.2 Name as a Necessary Aspect of Legal Personality

Having legal personality means being treated by the law as possessing the capacity to enter into formal relations with other legal persons and be held

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*States* § 201 Comment a (1987). As to the effectiveness of the definition, see John Dugard, *Recognition and the United Nations* 123 (Cambridge University Press 1987) ('Although Rhodesia, Transkei, Boputhatswana, Venda, Ciskei and, possibly, the Turkish Republic of Northern Cyprus met or meet the traditional requirements of statehood expounded in the Montevideo Convention of 1933, it is absurd to contend that any of these entities [...] acquired the status of "State".')

646. Even those who deem it inappropriate to view determinations of statehood as a checklist-based activity nevertheless tend to accept that certain fundamental characteristics 'constitute in legal terms the core of the concept of statehood'. Crawford, 42. Crawford qualifies this by arguing that the strictness of the elucidation of these characteristics in individual cases depends upon context and 'that the exclusive attributes of States do not prescribe specific rights, powers or capacities that all States must, to be States, possess: they are presumptions as to the existence of such rights, powers or capacities, rules that these exist unless otherwise stipulated. This must be so, since the actual powers, rights and obligations of particular States vary considerably. The legal consequences of statehood are thus seen to be—paradoxically—matters of evidence or rather of presumption.'

647. *Ibid.*, 89-95.

648. Art. 4(1) of the Charter of the United Nations requires that applicants: (1) be a state; (2) be peace-loving; (3) accept the obligations of the UN Charter; (4) be able and willing to carry out these obligations.

649. See Igor Janev, *Legal Aspects of the Use of a Provisional Name for Macedonia in the United Nations System*, 93 Am. J. Int'l L. 155, 160 (1999).

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accountable for one's actions, as are natural, living persons.<sup>650</sup> States are 'the principal examples of international persons.'<sup>651</sup>

Without a name, it has been argued, it is not possible to be identified and therefore not possible to engage and transact with others:

From the point of view of legal theory, the inherent right of a state to have a name can be derived from the *necessity* for a juridical personality to have a *legal identity*. In the absence of such an identity, the juridical person (such as a state) could – to a considerable degree (or even completely) – lose its capacity to conclude agreements and independently enter into and conduct its relations with other juridical persons. Therefore, the name of a state appears to be an *essential element of its juridical personality* and its statehood.<sup>652</sup> (emphasis in original)

This use of the term 'legal identity' helps to highlight that beyond their undeniably symbolic function, names primarily play a practical function in serving to identify things and distinguish them from others. Having some means by which to be identified and differentiated is certainly facilitative of engaging in relations with others, and contract law seeks as a general matter that parties be identifiable. A name is one means of distinguishing a party from another, but it is certainly not the only means; reference to geographical location, numbers and symbols could all be used, even if not as easily and memorably as names.<sup>653</sup> Each State could, for example, be assigned a number according to its order of accession to the United Nations, or it could be identified by its longitudinal and latitudinal coordinates or an image of its national flag. It could also be assigned a completely random and meaningless number. An analogy can be drawn with transactions between persons, in which context it is not strictly necessary that a party be referred to by name as opposed to another identifier or that the identifiers used have semantic value or be unique as against all others. It is simply necessary to provide sufficient information to distinguish one from others.<sup>654</sup>

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650. See *Restatement (Third) of the Foreign Relations Law of the United States* § 206 comment c.

651. Henkin et al., 241. See also Vattel, 1 §2 ('[L'Etat] deviant une personne morale, qui a son étendement et sa volonté propre, et qui est capable d'obligations et de droits').

652. Janev, *Legal Aspects of the Use of a Provisional Name for Macedonia in the United Nations System*, 160; Igor Janev, *Some Remarks of the Legal Status of Macedonia in the United Nations Organization*, 53 Rev. Int'l Aff. 1108 (2002).

653. Reference can be made here to domain names and the early decision to assign a name in addition to a number to identify hosts in the network. This is discussed in detail in Part I, Chapter 2, section 2.1.3 above.

654. See Janev, *Some Remarks on Legal Status*, 2 ('In the absence of such an identity, the juridical person, such as a state, could to a large extent (or even completely) lose [sic] its capacity to interact with other such juridical persons (e.g., conclude agreements, etc.) and independently enter into and conduct its external relations. The name of a state is, thus, an essential element of its juridical personality and, consequently, of its statehood.').

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Nor is a name required of a legal person in order to express consent to be bound, bearing in mind that the voluntary expression of State consent is the cornerstone of positive international law. Just as illiterate persons can indicate their willingness to be bound to a legal instrument by stamping their fingerprint upon it or inscribing the letter 'X', so too could States communicate consent to be bound in a variety of visible ways. It is the expression of consent that is of consequence, not the form that expression takes or the possibility that others' expression of consent takes a similar form.

Another key aspect of relations between legal persons is participation in dispute resolution. In the international context one can look to the Statute as well as the Rules of the ICJ (hereinafter, the 'ICJ Rules'),<sup>655</sup> the latter of which specify the manner in which proceedings are to be initiated and conducted. Article 38(1) of the ICJ Rules requires in relevant part that an application to commence proceedings before the Court must 'indicate the party making it, the State against which the claim is brought, and the subject of the dispute'. Considering subject matter first, the *Island of Palmas Case (or Miangas)*<sup>656</sup> demonstrates that territorial disputes are resolvable even where the territory the subject of the dispute is referred to by multiple names.

Turning to the naming of State parties, while Article 38(1) of the ICJ Rules does not expressly require that State parties have a name, names are typically used for this purpose. Article 38(1) does not preclude commencing proceedings before the Court against, for example, 'the State whose application for membership in the United Nations was made' on a particular date or in a particular numbered document or 'the fiftieth State to join the United Nations', but these are not things that ordinarily occur in practice. One need look no further than the ICJ's docket for evidence of the practice and consistency of the use of States' names in proceedings.<sup>657</sup> It must be noted, however, that not all States have come before the ICJ and its predecessor, the Permanent Court of International Justice,<sup>658</sup> with a name of their own choosing. An example of this is the ongoing case brought by the

655. Rules of Court (14 Apr. 1978, entered into force 1 Jul. 1978, as amended 14 Apr. 2005), I.C.J. Acts & Docs 4.

656. *Island of Palmas Case (or Miangas)*, Hague Court Reports 2d. 83 (1932), (Perm. Ct. Arb. 1928), 2 U.N. Rep. Intl. Arb. Awards 829.

657. On the significance of practice in treaty interpretation, see Vienna Convention on the Law of Treaties, Art. 31(3)(b). The ICJ docket is available at ICJ, *List of Cases referred to the Court since 1946 by date of introduction: List of contentious cases and advisory proceedings*, <http://www.icj-cij.org/docket/index.php?p1=3&p2=2> (accessed 15 Oct. 2012).

658. Publications of the Permanent Court of International Justice are available at ICJ, *Permanent Court of International Justice: Publications of the Permanent Court of International Justice (1922-1946)*, <http://www.icj-cij.org/pcij/index.php?p1=9> (accessed 15 Oct. 2012).

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‘former Yugoslav Republic of Macedonia’ against Greece,<sup>659</sup> a dispute which is comprehensively discussed in the next section of this chapter. The applicant’s name in that case is a provisional one recommended by the UN Security Council, and not the name under which that country sought membership in the United Nations. The relevant question at this point in the enquiry is whether, without the provisional name, this country would have been prevented from raising its claim against Greece. In other words, was possession of a name (provisional or permanent) procedurally necessary to commencing the case?

Article 38(1) of the ICJ Rules requires identification of ‘the party making’ the application. It does not demand a particular format that identification must take. Identification of a party other than by its name would not run counter to ordinary meaning or defeat the object and purpose of the treaty as prescribed by Article 31(1) of the Vienna Convention, but the existence of a consistent subsequent practice ‘in the application of’<sup>660</sup> Article 38(1) of the ICJ Rules supports an interpretation of this as calling for use of a State party’s name.<sup>661</sup> Because all parties before the Court have had names, it is difficult to envisage what might otherwise occur. Presumably, names are used unless the party in question does not have a name, in which case some other identifier must – from a purely practical standpoint – be an acceptable substitute. Unless otherwise specified in the Rules, standing could not logically be denied of the basis of non-possession of a name if possession of a name is not itself a condition of statehood.

This discussion reveals that a distinction must be made between practical necessity and legal necessity. It is undeniably the case that names facilitate the functions of the UN, and so much so that this could be characterized as necessary (as opposed to simply desirable) from a perspective of operational convenience. Yet from the ease of using names does not automatically follow a legal obligation. Neither can a general sense of legal obligation be easily inferred from existing evidence of practice in the functions of the UN. Rights in country names as such derived from States’ possession of legal personality, or indeed derived from any other condition or right of statehood, cannot be based upon practicality or ‘(mere) comity (*courtoisie, comitas gentium*)’.<sup>662</sup>

Even if it is the case that State parties are required to be referred by name in ICJ proceedings, this does not equate to a strict prohibition against nameless parties’ participation in proceedings, nor does it speak to exclusive

659. *Case Concerning the Application of Article 11, Paragraph 1, of the Interim Accord of 13 September 1995 (The Former Yugoslav Republic of Macedonia v. Greece)*, Memorial (I.C.J. 20 Jul. 2009) (available at <http://www.icj-cij.org/docket/files/142/16354.pdf>).

660. Vienna Convention on the Law of Treaties, Art. 31(3)(b).

661. See Gardiner, 225-232.

662. International Law Association, *Statement of Principles Applicable to the Formation of General Customary International Law: Final Report of the Committee on Formation of Customary (General) International Law*, Commentary to section 2(vi).

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rights of States in their names. There is no clear evidence of a felt sense of legal obligation to possess a name in order to participate as a UN member, and such a legal obligation is not expressly articulated in UN instruments. From these things and from the fungible nature of identifiers in legal transactions it can be concluded that possession of legal personality does not require possession of a name, and thus that States' claims to exclusive rights in country names should not be based upon their possession of legal personality.

6.3.2 NAME AS A RIGHT OF STATEHOOD

**6.3.2.1 A Right of States to Select a Name**

Even if not required in order to achieve the status of statehood, possession of a name may alternatively be a right that accrues as a consequence of having achieved statehood. This reasoning makes a distinction between the capacities that must be possessed in order to achieve the status of statehood from capacities or rights that, once statehood is achieved, are imputed to the State. This bifurcated approach is reflected, for example, in the Restatement (Third) of the Foreign Relations Law of the United States<sup>663</sup> (the 'Restatement'), which sets out the required elements of statehood in § 201 and then separately in § 206 the 'capacities, rights and duties of States' as:

- (a) sovereignty over its territory and general authority over its nationals;
- (b) status as a legal person, with capacity to own, acquire, and transfer property, to make contracts and enter into international agreements, to become a member of international organizations, and to pursue, and be subject to, legal remedies;

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663. The Restatements are treatises prepared and published by the American Law Institute on a variety of legal topics. They have the primary aim of providing guidance to judges and lawyers by clarifying and explaining fundamental legal subjects. The Third Restatement of the Foreign Relations Law of the United States captures international law as applicable to the United States, which 'stems largely from customary international law and international agreements to which the United States is a party.' ALI, *Publications Catalog: Restatements of the Law – Foreign Relations Law of the United States*, [http://www.ali.org/index.cfm?fuseaction=publications.ppage&node\\_id=33](http://www.ali.org/index.cfm?fuseaction=publications.ppage&node_id=33) (accessed 15 Oct. 2012). The Restatement of the Foreign Relations Law of the United States of course offers the perspective of only the United States as to international law, but the high regard in which its reporters are held mean that it has significance beyond that one country's borders: 'It should and will be consulted by lawyers in all parts of the world. For the lawyer in the United States, it may be a kind of authoritative codification. For lawyers in other countries, it is a valuable source of information about the foreign relations power in the United States and prevailing American views on international law.' Rudolf Bernhardt et al., *Book Review*, 86(3) *Am. J. Int'l L.* 608, 609 (1992) (reviewing *Restatement (Third) of the Foreign Relations Law of the United States*).

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- (c) capacity to join with other states to make international law, as customary law or by international agreement.

The wording of § 206 of the Restatement is illustrative of the general absence in international law and scholarship of an express attribution to States of a right to select or use a name. It is necessary, therefore, to consider whether such a right is implied because it is inherently an aspect of sovereignty, bearing in mind that sovereign rights derive from the ‘simple fact’ of the State’s ‘existence as a person under international law.’<sup>664</sup>

In determining whether possession and exclusive use of a name is a sovereign right of States, the advice offered by Justice Haynes of the High Court of Australia should be borne in mind: ‘Sovereignty is a concept that legal scholars have spent much time examining. It is a word that is sometimes used to refer to very different legal concepts and for that reason alone, care must be taken to identify how it is being used.’<sup>665</sup> Similar concern is expressed, for example, in the comments to § 206 of the Restatement, which specify that its use in this context of States’ rights ‘implies a state’s lawful control over its territory generally to the exclusion of other states, authority to govern in that territory, and authority to apply law there.’<sup>666</sup> The exercise of this control is a core right to inhere in all States.

As to whether there are more specifically articulated rights of States (which could include a right to a name), there are divergent views. Vattel’s reliance in the eighteenth century on natural law to explain the origin of States’ rights echoes in modern arguments supporting an inherent, ‘inalienable right’ of States to select and use a name.<sup>667</sup> These arguments can also be linked to a right to culture and heritage, similar to what was termed by an early twentieth century diplomat the right to ‘national distinctiveness’.<sup>668</sup> Contrasting with these is the view that ‘statehood does not involve any inherent substantive rights’ but is ‘rather a form of standing’.<sup>669</sup> The works of historical and contemporary scholars who support the notion of States’ rights offer little support for a specific right of States to select and use a name. Nevertheless, it is difficult to oppose the idea that a State may choose and use a name by virtue of the exercise of sovereignty and further that when it does so, it is free by virtue of that authority to place restrictions on others’

664. Convention on the Rights and Duties of States, Art. 4.

665. *Joosse v. Australian Securities and Investment Commission*, 159 A.L.R. 260, 263-264 (High Ct. Aust’l 1998).

666. *Restatement (Third) of the Foreign Relations Law of the United States* §206 comment (b).

667. See for example, Janev, *Legal Aspects of the Use of a Provisional Name for Macedonia in the United Nations System*, 160.

668. F.A. Pezet, *The Future Relations of the United States with Latin America from the Latin American Viewpoint*, 7(2) Nat’l Conf. Foreign Rel. U.S. 287, 287 (1917).

669. Crawford, 44-45.

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use of its chosen name within its sovereign territory. The same can be said of national flags and domestic laws prohibiting their desecration.<sup>670</sup>

In other words, sovereignty does not require that a State select and use a name to identify itself, but rather bestows States with the inherent authority to do so if they so choose.<sup>671</sup> In practice, States do select a name. This is evidenced by the United Nations Terminology Bulletin Country Names (from which, not coincidentally, the names of ccTLDs are derived).<sup>672</sup> Though not expressly required under the UN Charter or the Rules of Procedure of the General Assembly to do so, applications for UN membership refer to applicants by name.<sup>673</sup> indeed, compliance with Rule of Procedure 134<sup>674</sup> would be difficult as a practical matter if this were not done. The would be UN member is then acknowledged by that name on acceptance.<sup>675</sup>

670. An interesting comparative analysis of flag desecration laws is provided by Ute Krüdewagen, *Political Symbols in Two Constitutional Orders: The Flag Desecration Decisions of the United States Supreme Court and the German Federal Constitutional Court*, 19(2) *Ariz. J. Int'l & Comp. L.* 679 (2002).

671. See Janev, *Legal Aspects of the Use of a Provisional Name for Macedonia in the United Nations System*, 160 ('every state naturally has an inherent right to a name').

672. UN Terminology Bulletin No. 347/Rev. 1, *United Nations Terminology Bulletin Country Names* (available at <http://unstats.un.org/unsd/methods/m49/m49alpha.htm>). On the naming of ccTLDs, see Part I, Chapter 2, section 2.4.2 above.

673. Recent examples include the Application of the Republic of Bosnia and Herzegovina at U.N. Doc. A/46/921 S23971 Annex (19 May 1992) ('On behalf of the Presidency of the Republic of Bosnia and Herzegovina and in conformity with the United Nations Charter, I am submitting the request of the Republic of Bosnia and Herzegovina to be admitted to the United Nations Organization as a full Member State.');

Application of the Democratic Republic of East Timor at U.N. Doc. A/56/953-S/2002/558 Annex (20 May 2002) ('In connection with the application by the Democratic Republic of East Timor for membership in the United Nations, we have the honour, on behalf of the Democratic Republic of East Timor and in our capacities as the President of the Republic and the Prime Minister, to declare that the Democratic Republic of East Timor accepts the obligations contained in the Charter of the United Nations and solemnly undertakes to fulfil them.');

Application of the Republic of Montenegro, U.N. Doc. A/60/890-S/2006/409 Annex (16 Jun. 2006) ('In line with the results of the referendum held in the Republic of Montenegro on 21 May 2006, organized in accordance with Article 60 of the Constitutional Charter of the State Union of Serbia and Montenegro, in my capacity as President of the Republic of Montenegro, I have the honour to request the admission of the Republic of Montenegro to membership in the United Nations.').

674. Rule 134 of the Rules of Procedure of the General Assembly of the United Nations provides: 'Any State which desires to become a Member of the United Nations shall submit an application to the Secretary-General. Such application shall contain a declaration, made in a formal instrument, that the State in question accepts the obligations contained in the Charter.'

675. Continuing with the above examples, see the Admission of the Republic of Bosnia and Herzegovina to membership in the United Nations, U.N. Doc. A/Res/46/237 (22 May 1992); Admission of the Democratic Republic of East Timor for admission to membership in the United Nations, U.N. Doc. A/Res/57/3 (2 Oct. 2002); Admission of

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Sovereignty gives the State not only the authority to choose a name, but also to limit others' use of the selected name within its territory. There are, for example, reportedly 'thousands' of laws in Canada and 'probably millions' in the United States, that 'bestow upon "public authorities" (which are often not elected bodies but government agencies, state-owned corporations, or non profit organizations) an absolute right to control particular signifiers.'<sup>676</sup> All States have the authority to select names and regulate their domestic use in this way, and have this authority equally, as articulated in the Montevideo Convention at Article 4: 'States are juridically equal, enjoy the same rights, and have equal capacity in their exercise.' Yet equality among States raises certain challenges in this context in that it does not prevent a State from selecting another State's name as its own; indeed, equality suggests that they are each equally entitled to make a particular selection.

The question of States' rights in country names therefore does not end with name selection and use within the sovereign territory. It must further be considered whether States' authority to select a name is somehow limited by the rights of other States and relatedly, whether States have a right to be referred to by their chosen name.

### **6.3.2.2 A Right of States to Object to Another State's Name**

It is entirely possible that one State might choose to be identified in the same or similar way as another. This duplication of identifiers could be said to have a direct impact on the States in question and those transacting with them. While on the one hand it might be said that the only limit to name choice is imagination, in practice, geographic name choices are drawn from a relatively limited field of reference that is, by its very nature, shared with neighbouring States: 'The names of the countries are usually associated with their geographical location and dimension. Geography, at any rate, political geography, as reflected in the boundary making and delimitation of frontiers, territorial, maritime and aerial or atmospheric, changes with time.'<sup>677</sup> As borders fluctuate and time passes, so too are history, culture, language and environmental conditions shared, and it is from this pool of shared experience that geographic names are often drawn. Thus the very same reasoning behind one State's choice of name could also underpin another (particularly neighbouring) State's choice of name.

It is clear why a State would prefer that other States not choose the same name, and this bears out in practice. The relative infrequency with which naming conflicts have arisen is nevertheless surprising when one considers

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the Republic of Montenegro for admission to membership in the United Nations, U.N. Doc. A/Res/60/264 (12 Jul. 2006).

676. Coombe, 135-136.

677. Sompong Sucharitkul, *The Inter-temporal Character of International and Comparative Law Regarding the Rights of the Indigenous Populations of the World*, 50 Am. J. Comp. L. 3, 10 (2002).

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the frequency with which new States have been created and old ones extinguished in modern times: it has been noted that more than 125 new States have been created or reconstituted since the coming into force of the United Nations Charter in 1945, not including name changes.<sup>678</sup> Even in this highly dynamic environment, the only major conflict is the ongoing dispute between Greece and the country provisionally referred to as the 'former Yugoslav Republic of Macedonia', or 'FRYOM'. This dispute will next be critically analysed, but first, some comments must be made about its uniqueness. One conclusion to potentially be drawn from the scarcity of name choice disputes is that there is a customary rule of avoiding selecting a conflicting State name. The existence of such a rule is undermined, however, by the number of States with shared names<sup>679</sup> and the simple fact that in none of these cases has conflict arisen to the level of the Macedonia name dispute. What drives name choice (and, by corollary, avoidance of choosing what others have already chosen) may not be a sense of legal obligation but rather simply an overriding interest in avoiding confusion with other States – a practical preference to not be confused with others. Although (as concluded in the previous section of this chapter) possession of a name is not a necessary aspect of legal personality, it does make transacting with other legal persons more convenient. Where similar names can be differentiated, these can be used without serious issue.

What then would lead a State to select a name insufficiently distinctive from or objectionable to others? One possibility already alluded to in the previous paragraphs is that shared history and experiences could lead multiple States to select the same or similar representations and symbols of their sovereignty. Objection on this basis is defensible in principle only for neighbours or States otherwise currently or historically related. Exemplary of such a situation are neighbours Greece and the FRYOM, one of the new nations borne out of dismembered Yugoslavia.

Responding to Greece's objection to Macedonia's application<sup>680</sup> for UN membership, the UN Security Council recommended that the country be 'provisionally referred to for all purposes within the United Nations as "the Former Yugoslav Republic of Macedonia" pending settlement of the difference that has arisen over the name of the State'.<sup>681</sup> The name is but one

678. See Crawford, 715 and Appendix 1.

679. Examples of identical or materially similar country names include: (a) the Democratic Republic of the Congo and Republic of the Congo, (b) the Republic of Equatorial Guinea, the Republic of Guinea, the Republic of Guinea-Bissau, and the Independent State of Papua New Guinea, (c) the Democratic People's Republic of Korea and the Republic of Korea, and (d) Niger and Nigeria.

680. U.N. Doc. A/47/876-S/25147 (1992), discussed in detail in Michael C. Wood, *Participation of Former Yugoslav States in the United Nations and in Multilateral Treaties*, in *Max Planck Y.B. U.N. L.* 236-241 (Armin von Bogdandy ed., Martinus Nijhoff Publishers 1997).

681. S.C. Res. 817, 7 Apr. 1993, U.N. Doc. S/INF/49 (1993), at para. 2.

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aspect of this now long-running dispute; in earlier proceedings before the European Court of Justice (ECJ) Greece complained of large scale efforts to promote 'the idea of a unified Macedonia' through that country's chosen name (Republic of Macedonia), the wording of its constitution, and such activities as 'the circulation of maps, calendars and car stickers' and 'school history books' depicting the FYROM as encompassing Greek territory.<sup>682</sup> Also concerning to Greece was the FRYOM's adoption of the 'Sun of Vergina' on its flag, this emblem having been discovered in excavations on Greek territory.<sup>683</sup> Greece demanded that the FRYOM cease use of its chosen name and symbols and related activities, all of which it interpreted as territorial claims amounting to a threat of war.<sup>684</sup>

The ECJ's decision went not to resolving the name dispute but rather to interim measures requested by the European Commission to suspend economic sanctions imposed by Greece against the FRYOM, which request was ultimately rejected by the Court.<sup>685</sup> A subsequent Interim Accord between Greece and the FRYOM required only undertakings to continue negotiation 'with a view to reaching agreement' on this matter.<sup>686</sup> In 2008, the FRYOM instituted proceedings before the ICJ asserting that the Interim Accord had been breached by Greece by its objection to the FRYOM's application to join the North Atlantic Treaty Organization.<sup>687</sup> In December 2011, the Court found<sup>688</sup> that Greece's objection violated the Interim Accord. The applicant's clear intentions to refer to itself by its constitutionally chosen name within NATO (which ultimately resolved to delay a decision on admission pending resolution of the name dispute) was considered not to render Greece's objection lawful. The Court seized the opportunity to highlight the fact that the dispute has been ongoing for sixteen years, and to remind the parties of their obligation under the Interim Accord to make good faith efforts towards its resolution.

682. *Commission of the European Communities v. Hellenic Republic*, C-120/94 R I-03037 (E.C.J. 29 Jun. 1994), at para. 8.

683. *Ibid.*, para. 9.

684. *Ibid.*, para. 31.

685. *Ibid.*, para. 48.

686. Interim Accord (with related letters and translations of the Interim Accord in the Languages of the Contracting Parties), Greece-the former Yugoslav Republic of Macedonia, signed in New York 13 Sep. 1995, 1891 U.N.T.S. I-32193; 34 I.L.M. 1461 (13 Oct. 1995).

687. ICJ, Press Release, *The former Yugoslav Republic of Macedonia institutes proceedings against Greece for a violation of Article 11 of the Interim Accord of 13 September 1995*, No. 2008/40 (17 Nov. 2008) (available at <http://www.icj-cij.org/docket/files/142/14881.pdf>).

688. *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece)*, Judgment of 5 Dec. 2011.

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This dispute is a unique constellation<sup>689</sup> and though it remains unresolved, an attempt can be made to draw conclusions from the legality of Greece's demand that its neighbour avoid adopting the name 'Macedonia' in order to broadly articulate limitations upon States' sovereign rights to select a name. Notably, leading scholars have avoided doing so.<sup>690</sup> One highly regarded text characterizes the matter as one of 'political guarantees ensuring that [the FRYOM] had no territorial claims towards a neighbouring Community state'.<sup>691</sup> Another sees the dispute as illustrative of the potential problems inherent in States' sovereign authority, but makes no statement as to the legality of Greece's demands.<sup>692</sup> The problem, it has been said, is that this dispute:

both clarifies and obscures the status of country names in international law. On the one hand, both the UN's and the EU's reactions suggest that Greece's claim that a country's choice of name could be a form of aggression was not, as an abstract matter, per se unreasonable. Thus, it appears that international law recognizes the theoretical possibility that a country's choice of name might amount to hostile propaganda against a neighbour, such as in 'the use of a denomination which implies territorial claims.' In so doing, it suggests that the presumed norm that countries control their names has been weakened; conversely, it suggests that the idea that one country has rights regarding another country's use of names might theoretically have more merit than many had previously suspected.<sup>693</sup>

These comments attribute to States a right to select a name, but posit that this right is not absolute. This is consistent with the principle of sovereignty, which gives the State supreme but not absolute authority within its territory. Interference in domestic matters is permitted by Article 2(7) of the United Nations Charter, as well as by customary international law. Further, the Friendly Relations Declaration requires that 'every State shall refrain from any action aimed at the partial or total disruption of the national unity or

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689. Craven, *What's in a Name?*, 238 (characterizing this as 'the first occasion in which it has ever been suggested that a State, or for that matter a people, should not be the exclusive determinants of their own cultural and political symbols').

690. See Demetrius Andreas Floudas, *Pardon? A Name for a Conflict? FRYOM's Dispute with Greece Revisited*, in *The new Balkans: disintegration and reconstruction* (George A. Kourvetaris et al. eds., East European Monographs 2002).

691. Malcolm N. Shaw QC, *International Law* 452 (6th ed., Cambridge University Press 2008).

692. Colin Warbrick, *States and Recognition in International Law*, in *International Law* 241 (Malcolm D. Evans ed., Oxford University Press 2006).

693. Froomkin, *When We Say US™, We Mean It!*, 856, quoting the European Commission's 16 Dec. 1991 Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union, as reprinted in Danilo Türk, *Declaration on Yugoslavia*, 4(1) Eur. J. Int'l L. 73, 73 (1993).

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territorial integrity of any other State or country.<sup>694</sup> If the right of a State to select and use a name is based on sovereignty, then this limitation must correspondingly apply, meaning that one State's name choice cannot constitute an unlawful interference with the sovereignty of another State. Such an interpretation is supported by the general principle of abuse of rights, which serves to limit a State's choice of name to the extent that the choice had the effect of 'inflict[ing] upon another State an injury which cannot be justified by a legitimate consideration of its own advantage.'<sup>695</sup> A link to the general principle of good faith is equally clear given that '[a] state that acts in good faith is unlikely to abuse its rights.'<sup>696</sup> A related principle of 'good neighbourliness' was raised by Judge ad hoc Roucouas and suggested in his dissenting opinion to have been breached by the FRYOM.<sup>697</sup>

The determination of whether one State's choice of name constitutes an unlawful interference with the sovereignty of another State or a breach of the principles of good faith, abuse of rights or good neighbourliness depends entirely on the facts in question.<sup>698</sup> As a result, it is impossible to develop universal rules around the selection of country names. In the Macedonia dispute, the European Commission Declaration on Yugoslavia required each former Yugoslav republic to declare that it had agreed, *inter alia*, 'to adopt constitutional and political guarantees "ensuring that it has no territorial claims" against a neighboring E.C. country and that it would not use a name (e.g., Macedonia) that implied such claims and would conduct "no hostile propaganda activities" against a neighbouring E.C. country.'<sup>699</sup> This is likely as precise as rules could be articulated. This difficulty, along with the infrequency with which naming disputes have arisen,<sup>700</sup> may help to explain

694. *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations*, GA/RES/2625(XXV), U.N. Doc. A/8082 (1970).

695. L. Oppenheim, *International Law: A Treatise* 345 (8th ed., H. Lauterpacht ed., Longmans, Green & Co. 1955).

696. M. Byers, *Abuse of Rights: An Old Principle, a New Age*, 47 McGill L.J. 389, 406 (2002).

697. *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece)*, Judgment of 5 Dec. 2011 (Dissenting opinion of Judge ad hoc Roucouas).

698. See Craven, *What's in a Name?*, 234, citing *Case Concerning Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America)*, I.C.J. Rep. 1986 (I.C.J. 27 Jun. 1986).

699. European Community, *Declaration on Yugoslavia and on the Guidelines on the Recognition of New States (Extraordinary European Political Cooperation Ministerial Meeting, Brussels, 16 Dec. 1991)*, 31 I.L.M. 1485 (1992).

700. There is another reported instance of a naming dispute in recent history, in which proposed changes to the name of the country of Uzbekistan were rejected on the basis of their being interpreted as territorial claims. See Crawford, 68 n. 141, citing Karen Dawisha & Bruce Parrott, *Russia and the new states of Eurasia: the politics of upheaval* 85 (Cambridge University Press 1995).

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the non-existence of expressly acknowledged, detailed rules of international law on name selection.

There is no denying the potential for the choice of name by a State and even the purely internal, domestic use of the name to provoke (intentionally or unintentionally) changes in the world order. That part of the population in State A might be motivated by State B's choice of name to exercise a right of self-determination is a realistic possibility. Yet self-determination in its contemporary form is a right of peoples to be involved in a meaningful way in the constitution and maintenance of the systems that govern their lives.<sup>701</sup> The possibility that, as a right of peoples, self-determination encompasses a right to self- or group-identify using geographic names is explored in Chapter 9, below, along with other potential human rights bases of rights in geographic names.

**6.3.2.3            A Right of States to be Referred by Their Chosen Name**

A separate but related question is whether States have a right to be referred to by their chosen name. As discussed above, there is a strong practical and diplomatic incentive for States to have a name, but this does not necessarily speak to the existence of a legal obligation to have a name either generally or for a particular purpose. It has been noted earlier in this chapter that there is a practice of using names in the functions of the UN, though there are no provisions in the UN Charter that require members to have a name. The use of names is directed in certain UN procedures, for example in General Assembly plenary voting.<sup>702</sup> Yet use of *a* name is one matter, while use of a State's *chosen name* is another; the issue here is specifically whether, to give one specific example, the United States of America is obliged to use the name 'Russian Federation' when referring to that country within or even beyond the UN context.

For the most part, the practice of using names in the UN is axiomatic. Names are ordinarily used – and without any special emphasis on their being used – in accordance with the wishes of the named UN member. One notable instance of special emphasis is the General Assembly's pronouncement 'that, in accordance with the desires of its people, South West Africa shall henceforth be known as "Namibia".'<sup>703</sup> Applications are ordinarily accepted using standardized language,<sup>704</sup> and the new member is then referred to by

701. See Rupert Emerson, *Self-Determination*, 65 Am. J. Int'l L. 459, 465-466 (1971).

702. General Assembly of the United Nations, *Rules of Procedure and Comments*, Rule 87.

703. *Question of South West Africa*, G.A. Res. 2372(XXII), U.N. Doc. A/Res/2372(XXII) (12 Jun. 1968).

704. General Assembly resolutions on administration are worded as follows:

*The General Assembly,*

*Having received the recommendation of the Security Council of [date] that [State name] should be admitted to membership in the United Nations,*

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other members accordingly. The case of the FRYOM is in this context again a unique constellation: the UN Security Council avoided making use of that country's chosen name when resolving on its membership application, instead recommending admission of the 'State whose application is contained in document S/25147', and then recommending the use of a provisional name.<sup>705</sup> The General Assembly then admitted the so-called 'former Yugoslav Republic of Macedonia' using the standardized language just noted.

The Russian Federation provides an example of a different situation, that of an existing UN member changing its name. Leaving aside questions of continuation of membership<sup>706</sup> which lie outside the scope of this study, the Russian Federation's assumption of the Union of Soviet Socialist Republics' seat at the United Nations was characterized by then-President Yeltsin as a simple name change. He simply requested 'that the name "Russian Federation" should be used in the United Nations in place of the name "the Union of Soviet Socialist Republics".'<sup>707</sup> There is no record of objection to this request,<sup>708</sup> and the name 'Russian Federation' has accordingly since been used in the UN General Assembly and Security Council.<sup>709</sup>

Looking beyond these forums to the ICJ, it has been noted in the previous section of this chapter in the context of legal personality that there is uniform practice in referring to parties by name in ICJ disputes, and that this practice is supported at least to some extent by the wording of Article 38(1) of the ICJ Rules. That Article does not expressly require that an official name be used, but presumably the name of a UN member as per its admission is the name that will be used. The 'Macedonia' case is illustrative: it was docketed as '*the former Yugoslav Republic of Macedonia v. Greece*'. That case nevertheless offers no particular support to the existence of a legal obligation to refer to parties by their chosen name except insofar as it evidences a sense of felt obligation on the FRYOM's part to refer to itself by its provisional name as recommended by the UN Security Council. More assistance would have been offered were the roles of the parties in that case reversed (in other words, it would be interesting to see whether Greece would identify the respondent as something other than the 'former Yugoslav Republic of Macedonia'). Greece's counter-memorial and rejoinder did refer

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*Having considered the application for membership of [State name],  
Decides to admit [State name] to membership in the United Nations.*

*See for example, Admission of the Republic of Montenegro to membership in the United Nations.*

705. S.C. Res. 817, para. 2.

706. On continuation, see Yehuda Z. Blum, *Russia Takes Over the Soviet Union's Seat at the United Nations*, 3(2) Eur. J. Int'l L. 354 (1992).

707. U.N. Doc. 1991/RUSSIA, 1, excerpted in Blum, at 356.

708. See Crawford, 677.

709. See for example, U.N.G.A. Res. A/RES/65/281 (17 Jun. 2011).

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to the 'former Yugoslav Republic of Macedonia',<sup>710</sup> which is procedurally sensible, given that Greece was the respondent, but not expressly required by Article 49 of the ICJ Rules. It is also interesting to note that the respondent in the case against Greece before the ECJ was not identified as 'Greece' but rather as the 'Hellenic Republic' (the name under which it entered the Treaty Establishing the European Community).<sup>711</sup>

Of these instances just discussed, the language that is most strongly supportive of a right of members to be referred to by their chosen name is that of the UN Security Council in directing other members to refer to the 'former Yugoslav Republic of Macedonia' and do so 'for all purposes within the United Nations'.<sup>712</sup> This, ironically, is not a case of a State being referred to by its chosen name, but rather a provisional name to be used pending a dispute involving the name. Even if this or perhaps the Namibia case or standard practice offers a basis upon which a right of States to be referred to by their chosen name can be asserted, this is an extremely limited right which would prevent only alternative name use within and for UN purposes. This would not prevent the use of alternative names (e.g., a reference to the United Kingdom of Great Britain and Northern Ireland by the slang name 'Old Blighty',<sup>713</sup> or even a reference to that country as 'Britain' or 'the UK') by a member of the GAC in ICANN discourse, a government official from commenting to the press, or even in international relations outside of the UN context, while acknowledging the potential detriment such actions might in some instances have in terms of good international relations. Much of State conduct around naming appears to have as its basis not clearly identifiable legal rules but rather good international relations with the aim of avoidance and resolution of disputes through good faith negotiations. The United Nations Security Council has encouraged this from Greece and the FRYOM,<sup>714</sup> though as-yet those States have been unable to achieve resolution of their dispute.

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710. *Case Concerning the Application of Article 11, Paragraph 1, of the Interim Accord of 13 September 1995 (The Former Yugoslav Republic of Macedonia v. Greece)*, Counter-Memorial by Greece (I.C.J. 19 Jan. 2010) (available at <http://www.icj-cij.org/docket/files/142/16356.pdf>); *Case Concerning the Application of Article 11, Paragraph 1, of the Interim Accord of 13 September 1995 (The Former Yugoslav Republic of Macedonia v. Greece)*, Rejoinder of Greece (I.C.J. 27 Oct. 2010) (available at <http://www.icj-cij.org/docket/files/142/16356.pdf>).

711. Treaty Establishing the European Community (Consolidated Version) (25 Mar. 1957).

712. S.C. Res. 817, para. 2.

713. Michael Quinion, *World Wide Words: Blighty*, <http://www.worldwidewords.org/qa/qabli1.htm> (accessed 15 Oct. 2012).

714. See S.C. Res. 817.

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6.4 CONCLUSIONS ON RIGHTS IN GEOGRAPHIC  
NAMES AS SUCH

Two related bases have been explored in this chapter as potential sources of rights in geographic names under international law: Article 6*ter* of the Paris Convention for the Protection of Industrial Property and the principle of sovereignty. First, Article 6*ter* requires that States prohibit the registrability as trademarks of State flags and other emblems, as well as the emblems of IGOs. In this chapter, the interpretation of Article 6*ter* (1)(a) by WIPO has been confirmed with reference to recent survey evidence and as-yet unsuccessful attempts to amend that Article. The results of the questionnaire drafted by the WIPO Standing Committee indicate that many States are reserving country names from trademark registration even though they are not obliged under Article 6*ter* to do so. An isolated instance of the use of the notification procedure specified in Article 6*ter* (3) by Iceland has also been highlighted, but other actions in this space suggest that this is a unique interpretation of Article 6*ter* which does not constitute evidence of a custom of reserving rights in country names.

From discussions around proposed amendments to widen the scope of Article 6*ter* to include country names can be extrapolated the conclusion that there currently is no international law recognizing rights in country names as such that could be called upon to justify their exclusive use by States and the prevention of their use by others. The analysis documented in this chapter supports that view. It is only logical to reach the same conclusion as respects sub-national names. That said, Article 6*ter* does not prevent States from reserving rights in geographic names as such; it simply does not require that they do so. The protection offered by ICANN through the *gTLD Applicant Guidebook* is therefore not inconsistent with Article 6*ter*.

The second basis of rights evaluated in this chapter is the foundational international law principle of sovereignty. Governments have looked to the principle of sovereignty in order to justify what they view as an inherent right to prevent others' use of 'their' names. While there may be a growing body of examples of conflict over private parties' use of geographical names,<sup>715</sup> there are surprisingly few examples of name conflicts between States. As a result, there are very few constellations from which support of States' rights in country names can be drawn. In this chapter it has been considered that there are actually three rights potentially encompassed in a right of States to country names: a right to select a name, a right to object to another State's name, and a right to be referred to by a chosen name. In relation to none of these is there an express right contained in any international convention, though the ICJ Rules do refer to the identification of party names, while the UN General Assembly Rules refer to plenary voting according to name. At

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715. For examples, see discussion of UDRP cases involving geographic names at Part II, Chapter 3, section 3.3.1.2 above.

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the same time, in relation to none of these is there an express denial of a corresponding right in any international convention.

From the as-yet unresolved dispute between Greece and the FRYOM over the name 'Macedonia' can be extracted certain conclusions about States' rights to select and object to a name. This dispute is the manifestation of a rational tendency to select a name that happens to be based upon an identity or history shared with neighbouring States. The escalation of this dispute into an international legal dispute is, however, unique. From it and other instances of name similarity not escalated into international disputes it can be deduced that there is no rule of international law preventing one State from selecting the same or similar name as another State's. This dispute suggests that a State's right to select a name is not absolute, but rather is limited by obligations not to encroach upon another State's sovereignty and to act in good faith. There are no clear rules to determine when this occurs, nor is it practicable to attempt to develop rules beyond the general proscription imposed upon the FRYOM not to interfere with the territorial integrity of another State. Nor for the same reasons is it practicable to develop rules around objections to States' choice of name. These situations can only be resolved on a case-by-case basis, having due regard to the facts at issue.

As to the implications of these conclusions in the context of domain names, conflicting applications for new geographic gTLDs are inevitable: there are already in existence several constellations of similar country names which, although they have not previously been disputed in the offline context, could be the subject of a future challenge in the online context due to the technical requirement of absolute name uniqueness and the policy decision to prevent confusingly similar TLD strings. Although conflicting applications for a .macedonia new gTLD were not made in the initial round of top-level expansion under the New gTLD Program, these remain a real possibility in future expansion rounds if the prohibition on applications for country and territory names is lifted. It would be inappropriate to develop a single rule of priority on the basis of sovereignty, simply because sovereignty does not support such a rule. On this basis, as a matter of policy and to preserve the stability of the internet and its DNS, ICANN should consider refusing the creation of any geographic new gTLD for which competing applications have been submitted.

Finally, to the extent that a right to be referred to by one's chosen name can be derived from practice within the UN and before the ICJ, these are limited to those specific contexts and will not serve to prevent failures to properly identify a State in other contexts such as the DNS. Further, the recognition of a right in that limited context is not alone determinative of the exclusivity of a State's rights in a particular name in that particular context, or certainly in any other context.

## Chapter 7

# Rights in Geographical Indications

The protection of geographical indications is not only about the protection of names. It is about the protection of a certain quality and reputation that is attributable to a product that is made in a defined place. A mere name does not necessarily capture that concept of quality.<sup>716</sup>

### 7.1 GEOGRAPHICAL INDICATIONS AND WHY THEY PRESENT CHALLENGES

Geographic names that are used to denote the particular geographic origin of particular comestible products have since the early days of the Paris Convention for the Protection of Industrial Property held a special legal status separate from their potential registrability as trademarks. That status is, however, nowhere near as clearly defined or harmonized as it is for trademarks. When it comes to the recognition of rights under international law in geographical indications and related origin-connoting names, the question is therefore not whether rights are recognized, but whether the extent of their recognition is sufficient to have any impact upon their unauthorized use in a particular context such as the DNS.

The TRIPS Agreement contains provisions respecting ‘geographical indications’, but since long before its coming into force there have been two separate international treaty frameworks directed at the recognition of rights in origin-connoting geographic names. Entirely different agreements, one thing they have in common is a low number of signatories, as a result of

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716. O’Connor, *The law of geographical indications*, 18.

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which they can both reasonably be characterized as failures. A different picture emerges at the regional level, where the European Union in particular has constructed a robust protection framework out of Member States' traditions of recognizing rights.<sup>717</sup> Discussions on the issue of international recognition of geographical indications suggest that efforts are driven by Europe's eagerness for other members of the international community to embrace its framework or something closely resembling it.<sup>718</sup>

All members<sup>719</sup> of the WTO are required by the TRIPS Agreement to provide the means to protect geographical indications against use that would mislead the public or constitute unfair competition. It is up to members to determine how to meet this requirement. There is a vast range of approaches, including:

unfair competition and consumer protection, passing off, *sui generis* protection of geographical indications via registration, passive protection where the concept of geographical indications is defined and protection available through courts but no registration system, trademarks with geographical references, collective, guarantee and certification trademarks, and administrative schemes of protection.<sup>720</sup>

What the TRIPS Agreement provides is not a right in geographical indications as such but rather a limited right to prevent particular kinds of uses depending on the type of product to which the name relates. Importantly, as will be explored in detail throughout this chapter, a distinction is made between indications relating to wine and spirits and indications relating to other types of products.

This is as much as the WTO has – as-yet – managed to achieve in terms of reaching agreement among its members, and even getting to this point was difficult.<sup>721</sup> For those countries whose laws offer greater protection to geographical indications, including protection of indications as such, the TRIPS Agreement compromise offers little comfort because they see what is at stake as being much more than mere names, but national identity.<sup>722</sup> On the other hand, for those countries in which geographical indications have not traditionally been protected, the TRIPS compromise represents the edge of a slippery slope; members' ability to offer greater protection than that required under the Agreement (the so-called 'minimum standards framework') gives

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717. *Ibid.*, 123.

718. See for example, Cottier, *The Prospects for Intellectual Property in GATT*, 404.

719. See WTO, *Understanding the WTO: The Organization, Members and Observers*.

720. O'Connor, *The law of geographical indications*, 67.

721. See Cottier, *The Prospects for Intellectual Property in GATT*, 404.

722. See Tomer Broude, *Taking 'Trade and Culture' Seriously: Geographical Indications and Cultural Protection in WTO Law*, 26 U. Pa. J. Int'l Econ. L. 623, 661-622 (2005).

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rise to 'a clear risk of excessive protection' and of needing to make fundamental changes to existing law.<sup>723</sup>

As with geographic names generally, recent discussions about an international standard of protection for geographical indications have been motivated by the use of these names in the online environment. The World Intellectual Property Organization's WIPO II Report offered specific examples of unauthorized registrations of second-level domain names comprised of geographical indications, but as with geographic names generally, it was concluded that the TRIPS Agreement offered insufficient support for preventing this activity.<sup>724</sup> A decade later, the registration of second-level domain names comprised of geographical indications remains problematic. With the expansion of the DNS through the New gTLD Program, this problem will quickly and inevitably spread to the system's top-level, as well as into the lower levels of newly created gTLDs. It is therefore imperative to examine the status of geographical indications under international law in order to anticipate, and in at least some instances preventatively address, specific issues with potential to arise during the DNS expansion process.

This chapter begins with an introduction to the legal concept of a geographical indication and the international framework of protection that remains in development after more than one hundred years. Mirroring the way in which geographical indications are separated in this framework, the analysis of legal rights that follows is divided into two parts, the first exploring rights in wine and spirit geographical indications, and the second exploring rights in geographical indications for other products.

7.1.1                   GEOGRAPHICAL INDICATIONS, INDICATIONS OF SOURCE  
AND APPELLATIONS OF ORIGIN

The term 'geographical indication' is one of three legal terms used to describe geographic names that identify a particular product as originating from a particular geographical location. 'Geographical indication' is the term used by the TRIPS Agreement, Article 22(1) of which states: 'Geographical indications are, for the purposes of this Agreement, indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.' Key to this definition are three points: first, its limitation to 'goods'; second, the required nexus of the good with a particular territory; and third, the demonstration of nexus through a 'quality, reputation or other characteristic' being 'essentially attributable' to geographical location. These three points

723. Thomas Cottier, *The Agreement on Trade-Related Aspects of Intellectual Property Rights*, in *Trade and Intellectual Property Protection in WTO Law: Collected Essays* 145 (Cameron May 2005).

724. WIPO, *WIPO II Report*, paras 223-228 and 237-245.

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differentiate geographical indications from ‘indications of source’ and ‘appellations of origin’, the two other legal terms used to describe geographic names that identify a particular product as originating from a particular geographical location.

The precise characteristics of each of these types of names are identified immediately below, but as an initial matter the existence of significant points of overlap between the three terms should be emphasized: all ‘appellations of origin’ are considered to fall within the definition of ‘geographical indication’ while at the same time are also ‘considered to be a *species* of the *genus* “indications of source”.’<sup>725</sup> It is nevertheless unwise to consider ‘geographical indication’ an ‘umbrella term’; ‘not all indications of source are covered by the definition of geographical indications since not all of them would necessarily have the “quality, reputation or other characteristic of the good which is essentially attributable to its geographical origin”.’<sup>726</sup>

Of the three terms, ‘indication of source’ is the broadest and longest in use at the international level. What started as draft Article 6 at the 1880 Paris Conference would ultimately take shape in Article 10 of the Paris Convention for the Protection of Industrial Property as a prohibition on the use of false indications of the source of goods.<sup>727</sup> This prohibition was limited to the use of false indications only to the extent that they were used in conjunction with a false, fictitious, or deceptive trade name.<sup>728</sup> Such narrow drafting provoked a separate agreement in 1891, the Madrid Agreement for the Repression of False or Deceptive Indications of Source (the ‘Madrid (Indications of Source) Agreement’), which made actionable any ‘false or deceptive indication’, whether direct or indirect, of the country or place of origin.<sup>729</sup> Notably, no nexus to the territory in the form of characteristics or reputation specifically attributable to the geographical location was required under the Madrid (Indications of Source) Agreement. More than eighty years later, the World Intellectual Property Organization’s Model Law for Developing Countries on Appellations of Origin and Geographical Indications maintained this position, defining ‘indication of source’ as ‘any expression or sign used to indicate that a product or service originates in a country or region or a specific place’.<sup>730</sup>

Despite the liberalization of Article 10 achieved at the 1958 Paris Convention Revision Conference at Lisbon,<sup>731</sup> interest in yet stronger protection led to another, separate agreement, the Lisbon Agreement for the

725. Bodenhausen, 23 (internal citations omitted).

726. O’Connor, *The law of geographical indications*, 24.

727. See Conrad, 23.

728. *Ibid.*

729. Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods, Art. 1(1) (14 Apr. 1891), 828 U.N.T.S. 163.

730. WIPO, *Model Law for Developing Countries on Appellations of Origin*, P/J/91/2, No. 809(E)(1975).

731. See Conrad, 23.

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Protection of Appellations of Origin and their International Registration (the ‘Lisbon Agreement’).<sup>732</sup> Article 2(1) of the Lisbon Agreement defines the term ‘appellation of origin’ as ‘the geographical name of a country, region, or locality, which serves to designate a product originating therein, the quality and characteristics of which are due exclusively or essentially to the geographic environment, including natural and human factors’. Unlike the Paris Convention and Madrid (Indications of Source) Agreement, the Lisbon Agreement applies only to geographic names and protects them as such; symbols and other signs are not protected. Thus it offers stronger protection than the previous agreements, but to a narrower set of indications.

Although Articles 22, 23 and 24 of the TRIPS Agreement were based on the Lisbon Agreement, its definition of ‘geographical indication’ marks a return to a broader scope of covered indications. The TRIPS Agreement does not require that an indication be a geographic name, but where an indication is geographic, it must relate to a single Member State only: country names qualify, but cross-border regional names like ‘Caribbean’ do not.<sup>733</sup> Further, the TRIPS Agreement requires that an indication ‘identify’ a ‘good’ rather than ‘designate’ a ‘product’, though it has been concluded that this change in wording is of no legal effect.<sup>734</sup> Finally, the TRIPS Agreement allows for a good’s non-physical reputation to be the basis of its nexus to the geographical location, while the Lisbon Agreement requires a physical tie in the form of quality and characteristics of a product as directly resulting from its geographical location.

By reason of its inclusion in the TRIPS Agreement, to which all WTO members are bound, the term ‘geographical indication’ is the most authoritative of these three terms for origin-connoting names. Neither the Madrid (Indications of Source) Agreement nor the Lisbon Agreement has a critical mass of contracting parties, the former with thirty-five and the latter with twenty-seven.<sup>735</sup> In terms of an up-to-date exposition of rights, ‘geographical indication’ is also the most appropriate term by reason of its use in the TRIPS Agreement and in the Doha trade round agenda.<sup>736</sup> This chapter thus primarily focuses on ‘geographical indications’ as these are defined in the TRIPS Agreement, with the goal of determining their status under international law at the point of launch of ICANN’s New gTLD Program. Where

732. Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (31 Oct. 1958, entered into force 25 Sep. 1966), 923 U.N.T.S. 205.

733. See O’Connor, *The law of geographical indications*, 52-53.

734. See Gervais, 294 n. 378.

735. WIPO, *Lisbon Agreement (Total Contracting Parties: 27)*, [http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty\\_id=10](http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=10); WIPO, *Madrid Agreement (Indications of Source) (Total Contracting Parties: 35)*, [http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty\\_id=3](http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=3) (accessed 15 Oct. 2012).

736. *Doha WTO Ministerial Declaration*, Art. 18, WTO Doc. WT/MIN(01)/DEC1 (20 Nov. 2001) (available at [http://www.wto.org/english/thewto\\_e/minist\\_e/min01\\_e/mindecl\\_e.htm](http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm)).

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specific issues of overlap or conflict with the other two forms of rights ('appellations of origin' or 'indications of source') are present, these are identified.

#### 7.1.2 THREE CONVENTIONS, THREE GROUPS OF GOODS

The immediately preceding section of this chapter identifies three conventions that specifically address geographic names used to identify a particular product as originating from a particular geographical location: the Madrid (Indications of Source), Lisbon and TRIPS Agreements. These three conventions are distinguishable not only by the subject matter they protect ('indication of source', 'appellation of origin' and 'geographical indication', respectively) but also by the level of protection extended to their respective subject matters.

Of the three conventions, the Lisbon Agreement offers the highest level of protection by recognizing rights in appellations of origin through a registration system comparable to the trademark system. Members are required by Article 1(2) to protect through domestic law all appellations of origin 'as such', meaning that only rights in the nature of exclusive property are recognized and recorded in the register. Mere limitations on the use of appellations through, for example, consumer protection, tort, unfair competition law or equitable principles are not sufficient. Specifically, domestic law must prohibit, pursuant to Article 3, all usurpation or imitation, including 'style' or 'type' indications. All appellations are treated equally, without regard to type of product, and appellations protected in the home country are immunized under Article 6 from 'genericization' in all signatory States. This means that protection can never be lost on the grounds that the public has come to equate the geographic name with a general type of product, unless this happens in the country of origin or for some other reason protected status is lost there. This high level of protection, and in particular the protection against genericization, helps to explain the relatively low number of signatories<sup>737</sup> to this agreement of whom several, not coincidentally, are the strongest advocates of increasing geographical indication protection in the WTO Doha trade negotiations round. These efforts are discussed in detail later in this chapter.

The Madrid (Indications of Source) Agreement, by contrast, covers a broader scope of indications but offers them a lower standard of protection, preventing only false and misleading use. Use includes representations on a

737. Contracting parties comprise: Algeria, Bulgaria, Burkina Faso, Congo, Costa Rica, Cuba, Czech Republic, Democratic People's Republic of Korea, France, Gabon, Georgia, Greece (not in force), Haiti, Hungary, Iran (Islamic Republic of), Israel, Italy, Mexico, Montenegro, Morocco (not in force), Nicaragua, Peru, Portugal, Republic of Moldova, Romania (not in force), Serbia, Slovakia, Spain (not in force), the former Yugoslav Republic of Macedonia, Togo, Tunisia, Turkey (not in force). WIPO, *Lisbon Agreement (Total Contracting Parties: 27)*.

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product as well as advertising and related communications – what the Agreement terms at Article 1(1) ‘direct’ and ‘indirect’. Other than its broadening of protection to not merely false but misleading indications, there are few substantive differences between the Madrid (Indications of Source) Agreement and the protection offered under the Paris Convention.<sup>738</sup> On the issue of genericization, members are prevented by Article 4 from treating any indications for wine as generic terms. This protection is not extended to other products.

TRIPS Agreement members, by far the most numerous of these three conventions, are required to prevent the importation of goods that directly or indirectly use false indications under Article 10 of the Paris Convention, by virtue of that convention’s inclusion by reference. This is despite the fact that Article 10 was not initially geared toward origin statements: Article 10(1) requires no nexus to a geographical location; false indication of the ‘identity of the producer, manufacturer, or merchant’ is actionable. Given the necessarily commercial nature of this right and its broader applicability to geographic names other than geographical indications, Article 10 is discussed in the next chapter, which focuses on unfair competition and related rights arising out of the commercial use of geographic names.

Articles 22 through 24 of the TRIPS Agreement are, on the other hand, specifically focused on geographical indications and are set out in that Agreement under a separate heading of that name. Nexus to territory is required, but ‘any aspect or element of geographical origin, known or unknown, physical or human, may underpin a quality, reputation or other characteristic of a good identified as originating in a particular place.’<sup>739</sup> More clearly than the Madrid (Indications of Source) Agreement but unlike the Lisbon Agreement, protected indications are divided into two groups by the type of product they identify: wines and spirits, and other products. The scope of protection afforded under the TRIPS Agreement to these two groups of products is explored next, and areas of conflict between this protection and the use of protected names in the DNS are identified.

## 7.2 RIGHTS IN GEOGRAPHICAL INDICATIONS UNDER THE TRIPS AGREEMENT

### 7.2.1 SCOPE OF PROTECTION FOR WINE AND SPIRIT GEOGRAPHICAL INDICATIONS

There has long been a practice in Europe of identifying wines by the name of the region from which they originate. Chianti has been identified as

<sup>738</sup>. See O’Connor, *The law of geographical indications*, 31.

<sup>739</sup>. *Ibid.*, 54.

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possibly being the first legally defined geographical indication, its status having been declared by a Decree of Grand Duke Cosimo III de' Medici in 1716.<sup>740</sup> The name 'Champagne', the globally-recognized icon for the many issues and questions surrounding the recognition of rights in geographical indications at an international level, is said to have been formally recognized in 1887 by the Angers Court for use only in connection with wines produced and grown in the Champagne region of France.<sup>741</sup> This was not the first recognition of a geographical indication in France, but rather the start of a period of momentum in which courts 'confirmed that the name of a locality belonged to all the inhabitants that had interest to exploit it to make the situation of their establishment known, and the place of origin or of manufacturing of their products.'<sup>742</sup>

The concern in early cases recognizing geographical indications seems not to have been the identification of particular characteristics of products as a nexus to the territory of origin; rather, the names served purely to link geographical location of fabrication with product.<sup>743</sup> Today, Article 22(1) of the TRIPS Agreement requires that there be a deeper nexus between territory and product: it is not sufficient that a good simply originate from a defined geographical location. For all products, not just wines and spirits, it must be shown that 'a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.' In meeting this standard, 'any aspect or element of geographical origin, known or unknown, physical or human, may underpin a quality, reputation or other characteristic of a good identified as originating in a particular place.'<sup>744</sup>

A nod to their longstanding use in the 'Old World', Article 23 of the TRIPS Agreement accords a higher level of protection to wine and spirit geographical indications than it does to indications for other goods. Specifically, Article 23(1) sets a standard of absolute protection, meaning that it requires Member States to prevent all uses of a wine or spirit geographical indication on wines or spirits not originating in the identified geographical location, 'even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like.' Article 23(2) further prevents registration and requires invalidation of trademarks containing or consisting of a geographical name of a wine or spirit for wines or spirits.

To wines alone, the TRIPS Agreement directs further refinements in their current and future recognition. As to their current recognition, Article

740. See Broude, 666.

741. See Alessandro Stanziani, *Wine Reputation and Quality Controls: The Origin of the AOCs in 19th Century France*, 18 Eur. J. L. Econ. 149, 157-8 (2004).

742. *Ibid.*, 157 (internal citations omitted).

743. *Ibid.*, 157-158.

744. O'Connor, *The law of geographical indications*, 54.

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23(3) recognizes homonymous geographical indications, thus acknowledging the potential for a ‘New World’ wine region to have been named by its inhabitants after the ‘Old World’ wine region from which they emigrated. As to future recognition, Article 23(4) directs that negotiations be undertaken regarding the establishment of a ‘multilateral system of notification and registration of geographical indications for wines eligible for protection’ in their home country. This is the highest level of protection (and potential for future protection) offered to geographical indications under the TRIPS Agreement, and yet it still leaves many gaps into which unchallengeable uses may fall.

7.2.2                   ISSUES FOR WINE AND SPIRIT GEOGRAPHICAL  
INDICATIONS AS GTLD STRINGS

**7.2.2.1                Top-Level Domains Offer a Service, Not Goods**

The WIPO II Report highlighted ‘two fundamental problems in endeavoring to apply the existing international legal framework to prevent the bad faith misuse of geographical indications in the DNS.’<sup>745</sup> The first of these is the limitation of protection to geographical indications used to identify goods. In respect of second-level domain names, it was concluded:

The mere registration of a geographical indication as a domain name by someone with no connection whatsoever with the geographical locality in question, however cheap and tawdry a practice, does not appear to be, on its own, a violation of existing international legal rules with respect to false indications of source and geographical indications. Such a registration may violate existing standards if it is associated with conduct relating to goods. ... one can imagine various hypothetical uses of domain name registrations with respect to goods which might be considered to constitute violations of the provisions on the protection of geographical indications in the TRIPS Agreement. However, there are many circumstances in which a domain name registration, even though constituting a false or unauthorized use of a geographical indication, may not constitute a violation of existing international rules because there is no relationship between the domain name and goods.<sup>746</sup>

An obvious corollary to the limitation to goods is the exclusion of services, which has been subjected to scrutiny. The term ‘good’ notably replaces ‘product’, the term used in the Lisbon and Madrid (Indications of Source) Agreements and the Paris Convention, and this has been interpreted as evidence of the drafters’ intention to exclude services from Articles 22 and

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<sup>745</sup> WIPO, *WIPO II Report*, para. 239.

<sup>746</sup> *Ibid.*, para. 240.

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23: 'It seems that where negotiators wanted to indicate that a rule in respect of indications applied to services as well as goods, they said so.'<sup>747</sup> Others have also reached this conclusion.<sup>748</sup> Thus, for example, a registration of the domain name *www.champagne.com* must be prevented pursuant to Article 23(1) if the website operated under that name purported to sell or offer for sale sparkling wines not originating in Champagne, France or 'Champagne-type' sparkling wines. It could not be prevented if the website offered information about such products not in the context of advertising their sale or if it offered other services (such as hospitality and tourism services offered by a hoteliers' association in the Champagne region). The existing international legal framework thus offers, in the words of the WIPO II Report, 'only a partial solution to the problem of' registration of geographical indications as second-level domain names.<sup>749</sup>

By contrast, the existing international legal framework offers no solution at all at the top-level of the DNS. The explanation for this lies in the fundamental differences between the top and lower levels of the DNS, which have been comprehensively discussed in Chapter 2. To summarize that discussion, second and lower level domain names have come to be used to identify the content of the websites to which they point. Use of a geographical indication in connection with goods is possible (though not inevitable) in that environment, where the domain name serves to identify goods offered for sale by means of an associated website. Use of a geographical indication in connection with goods is not possible, however, where the domain name serves to identify a communications portal for use by others for a variety of purposes (offering goods or services, expressing an opinion, reporting news, etc.) as top-level domains do. Top-level domains are themselves a service: the registry's primary function is to maintain an up-to-date listing of all of the second-level domain name registrations within them. This facilitates access to and between the registrants of those domain names, the registrants of domain names in other top-level domains and internet users. In short, top-level domain registries have no inherent connection to goods. They provide an environment in which others can self-identify and make available information which may or may not be connected to goods. A .football top-level domain, for example, would have only an indirect connection, if even any, to footballs. Rather, .football identifies itself as a space in which web users are able to communicate with

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747. Gervais, 298. As an example of an explicit application to services, Gervais points to Art. 24(6) of the TRIPS Agreement.

748. See for example, O'Connor, *The law of geographical indications*, 53. It is also interesting to note the reference to Art. 22 in the Jamaican delegation's proposal regarding the scope of Art. 6ter of the Paris Convention, in which concern is expressed at that provision's failure to cover services. See WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications, *Report Adopted by the Standing Committee*, para. 311, SCT/21/8.

749. WIPO, *WIPO II Report*, para. 240.

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others, most likely about things having to do with ‘football’, which term has multiple interpretations (an item of sports equipment as well as various forms worldwide of a sport called ‘football’). The same can be said of a .champagne or a .parmigiano-reggiano top-level domain.

This means that Article 23 of the TRIPS Agreement offers no protection against uses of geographical indications for wines and spirits at the top-level of the DNS. Even to the extent that the second ‘fundamental problem’ identified in the WIPO II Report – the lack of harmonization as to the recognition of geographical indications<sup>750</sup> – was somehow resolved, this would not change the outcome as regards geographical indications’ use as a top-level domain. To impute a connection with goods to a top-level domain is to deny the very structure of the DNS. For this reason, expansion at the top-level cannot simply mirror the geographical indications community’s attempts at managing growth at the second-level; the issues are similar, but clearly not the same.

**7.2.2.2 Homonymous Wine Geographical Indications Possible, TLDs Impossible**

Another issue that can be managed at the second-level of the DNS but proves insurmountable at its top-level is that of homonyms. Article 23(3) of the TRIPS Agreement recognizes homonymous geographical indications for wines by requiring that they be protected and also that the States involved resolve conflicts by establishing means of differentiation. In so doing, States are to ensure not only that consumers are not misled, but also that the producers involved are treated equitably. This recognition is made ‘subject to the provisions of paragraph 4 of Article 22’, which prevent the use of geographical indications that are ‘literally true as to the territory’ but nevertheless ‘falsely represent to the public that the goods originate in another territory’. Recognition of homonyms enables, for example, the co-existence of Rioja as a geographical indication identifying wines from the Rioja region of Spain as well as a geographical indication identifying wines from the Rioja region of Argentina.<sup>751</sup>

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750. *Ibid.*, para. 241.

751. Based on the example offered by Daniel Gervais of Rioja regions and wines in both Argentina and Spain in *The TRIPS Agreement: Drafting history and analysis*, 306 n. 419. This example is also used in Irene Calboli, *Expanding the Protection of Geographical Indications of Origin under TRIPS: ‘Old’ Debate or ‘New’ Opportunity?*, 10(2) Marq. Intell. Prop. L. Rev. 182, 192 (2006) (citing Felix Addor & Alexandra Grazioli, *Geographical Indications beyond Wines and Spirits: A Roadmap for a Better Protection for Geographical Indications in the WTO/TRIPS Agreement*, 5 J. World. Intell. Prop. 865, 879 (2002)). See also Iris V. Quadrio & Martin Chajchir, *Nineteenth Yearly Review of International Trademark Jurisprudence*, 102 Trademark Rep. 455, 468-469 at ‘Argentina: II.C.3. Geographical Indications/Appellations of Origin’ (2012).

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The sorts of ‘creative solutions’<sup>752</sup> that might be employed to distinguish wines identified by homonymous names to achieve their co-existence as ‘offline’ geographical indications are of some assistance at the second-level of the DNS, but of no effect at the system’s top-level. Domain names require only absolute uniqueness, so variation at the second-level, even minor, can serve to distinguish a *www.riojaspain.com* from a *www.riojaargentina.com*. Even easier, and indeed in direct acknowledgement of the territorial nexus of geographical indications, would be to distinguish homonym wines through the use of country code top-level domains: *www.rioja.es* and *www.rioja.ar*. Yet this sort of variation is not possible at the top-level of the DNS, where concerns about user confusion are captured in the *gTLD Applicant Guidebook* via rejection and objection on grounds of confusing similarity.<sup>753</sup> In other words, the bar is set higher than absolute uniqueness for top-level domain strings, and there is simply no way to accommodate homonyms for wines or indeed for any other products even if these were at some point to receive a consistent level of protection under international law. Put simply, there cannot be more than one *.rioja* internet top-level domain.

Even the availability of IDNs (domain names in non-Latin language scripts) is unlikely to offer a satisfactory answer to this problem given the likelihood that in addition to retaining the name of their ‘Old World’ region, emigrants also retained the language of their country of origin or at least a version of it insufficiently distinguishable from the original to survive objection on grounds of confusing similarity. Whether the States involved in a conflict over homonymous geographical indication new gTLDs could reach the sort of compromise called for by Article 23(3) is questionable. Also questionable is two States reaching agreement to share a gTLD, with the result that resolution of conflicting applications will be left to community priority evaluation and/or auction.<sup>754</sup> The result under either all-or-nothing approach is a losing party’s exclusion from the top-level of the DNS. Even if a sufficiently different (and agreeable) alternative string exists, the gTLD applicant must wait until a subsequent DNS expansion round to apply for it.

Member States likely to find themselves in this position should consider that ‘if the solution adopted by a Member prejudiced the producers of another Member or could objectively mislead consumers, it could be argued that that Member had failed to comply with’<sup>755</sup> Article 23(3). Applying this logic to the New gTLD Program, a State’s authorization of a geographical indication new gTLD application would violate Article 23(3) of the TRIPS Agreement if it ‘prejudiced the producers’ of products in another State identified by an identical geographical indication. It is not difficult to come

752. Gervais, 307.

753. ICANN, *gTLD Applicant Guidebook*, section 3.2.2.1.

754. *Ibid.*, section 4.1.

755. Gervais, 307.

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to the conclusion that exclusion from the DNS root would indeed prejudice the holders of a competing geographical indication. Although likely to be few in number, conflict between homonymous geographical indications has the potential to be extremely problematic. It is imperative that the States likely to be embroiled in such conflicts (which should be easy to identify given that they would already presumably have taken action in the offline context pursuant to Article 23(3)) give consideration to this issue and develop strategies for addressing it.

In conclusion, it appears impossible to extend the protection offered by Article 23 of the TRIPS Agreement to geographical indications for wines and spirits at the top-level of the DNS. Geographical indications for other products receive an even lower level of protection, and in the next section it will be shown that these are also unable to be protected against unauthorized use as gTLDs.

7.2.3                   SCOPE OF PROTECTION OF OTHER PRODUCT  
GEOGRAPHICAL INDICATIONS

While geographical indications for wine and spirits receive what is characterized as ‘absolute’ protection under the TRIPS Agreement, indications for all other products are said to receive only ‘relative’ protection.<sup>756</sup> Specifically, Article 22(2) requires that Members prevent any use of a geographical indication that is misleading as to the true geographic origin of the goods. It does so by requiring Member States to take steps to prevent any communication ‘that indicates or suggests that the good in question originates in a geographical area other than the true place of origin’. Acts of competition or confusion with goods of a competitor are notably not limited, but this provision ‘would seem to require at least trying to benefit from or denigrate the reputation of an industrial sector.’<sup>757</sup> Article 22 also brings geographical indications meeting the TRIPS definition of that term within the scope of Article 10*bis* of the Paris Convention, effectively expanding the scope of

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756. See Stephen A. Bowers, *Location, Location, Location: The case against extending geographical indication protection under the TRIPS Agreement*, 31(2) A.I.P.L.A. Q. J. 129, 131 (2003); Thomas Cottier & Marion Panizzon, *Traditional Knowledge and Geographical Indications: Foundations, Interests and Negotiating Positions*, in *Trade and Intellectual Property Protection in WTO Law: Collected Essays* (Cameron May 2005); Lynne Beresford, *Geographical Indications: The Current Landscape*. But see Dwijen Rangnekar, *Demanding Stronger Protection for Geographical Indications: The Relationship between Local Knowledge, Information and Reputation*, #2004-11 United Nations University-INTECH Discussion Paper Series (2004) (arguing that it is inappropriate to consider Art. 23 as ‘absolute’ protection).

757. Gervais, 301.

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Article 10bis since it does not otherwise apply to origin statements.<sup>758</sup> The effect of this is explored in detail in Chapter 8.

As noted in the preceding section of this chapter, the TRIPS Agreement preserves the origin-connoting nature of geographical indications: specifically, Article 22 permits the nexus between good and territory to be not only particular physical characteristics but the intangible attribute of reputation. This is a significant point of departure from the Lisbon Agreement, which limits protectable appellations of origin to those whose quality and characteristics are attributable to geographical location. The TRIPS Agreement broadens the scope of protectable indications, but this does not impact upon the level of protection offered. Unlike the protection offered by Article 23 to geographical indications for wines and spirits, Article 22 does not require the prevention of 'kind', 'type', 'style', 'imitation' or similar uses of geographical indications for other products. This is subject only to the limitation in Article 22(4) prohibiting indications that are 'literally true as to the territory' but nevertheless 'falsely represent to the public that the goods originate in another territory'.

Like unauthorized wine and spirit geographical indication TLD strings, unauthorized use of geographical indications for other products is not preventable. This is not simply because they receive a lower level of protection under the TRIPS Agreement relative to wine and spirit geographical indications, but because the protection they do receive is limited, as with wine and spirit geographical indications, to names identifying goods. As recognized in the WIPO II Report more than a decade ago, the use of geographical indications as second-level domain names to lure prospective consumers to a website offering products other than those true to geographical origin could fall within the scope of Article 22(2)(a).<sup>759</sup> Top-level domains' lack of connection to goods renders TLD strings comprised of non-wine or spirit geographical indications in all cases unpreventable.

This conclusion can be reached without consideration of another key impediment to the recognition of rights at the international level in geographical indications, which is the lack of harmonization of protection at the international level. This was characterized as one of the 'fundamental problems' in the WIPO II Report.<sup>760</sup> In practical terms, the lack of harmonization means that a name protected in one jurisdiction may not be protected in others. This is the heart of the divide between countries that support recognition and those that do not, a division that has only become further entrenched in the negotiations called for by Article 23(4) of the

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758. See Conrad, 35-36 (further arguing at 36 that the TRIPS Agreement 'extends the purview of Article 10bis for the members of GATT/TRIPS without revealing that it is not simply the incorporation of a parallel treaty, but an extension of its scope' (internal citations omitted)).

759. See WIPO, *WIPO II Report*, para. 240.

760. *Ibid.*, para. 241.

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TRIPS Agreement. In the remaining section of this chapter, the status of those negotiations is explored as a foundation for considering the possible effect that the New gTLD Program will have on the future recognition of rights in geographical indications. Two other issues are additionally taken up given their relevance to new gTLD applications: the impact of an international register on the recognition of rights in the DNS and issues of priority between trademarks and geographical indications.

7.3                    OTHER ISSUES FACING GEOGRAPHICAL  
INDICATIONS IN THE DNS

7.3.1                INTERNATIONAL NOTIFICATION AND REGISTRATION  
SYSTEM

A primary reason offered in the WIPO II Report for not including geographical indications within the scope of the Uniform Domain Name Dispute Resolution Policy (UDRP) was the lack of harmonization at the international level on the recognition of rights and, therefore, the inability to point to one clear international owner of any given geographical indication.<sup>761</sup> In the TRIPS-plus environment, side agreements might, if sufficient in number of signatories and patched together, offer geographical indications the subject of those agreements a level of recognition that comes closer to being equivalent to a universal convention,<sup>762</sup> but this would require a significant amount of research to discern which indications these might be, if any. An international register would remove this problem, putting all on clear notice of the existence and owner of recognized geographical indications. This is the solution proposed by Article 23(4) of the TRIPS Agreement for geographical indications for wines.

The Lisbon Agreement's establishment of an international notification and registration system has far broader application in that it incorporates geographical indications for all products, not only wines. That agreement has already established an International Register which is maintained by WIPO on behalf of the twenty-seven signatories. Despite that relatively low number, the involvement of 'Old World' countries such as France, the Czech

761. *Ibid.*, at Executive summary para. (iv) and paras 241-243.

762. See Peter Drahos, *BITS and BIPS: Bilateralism in Intellectual Property*, 4 J. World Intell. Prop. 791, 802 (2001) ('The key point is that the MFN principle in TRIPS, when combined with bilateralism on intellectual property, will have the effect of spreading and setting new minimum standards of intellectual property faster than would have happened otherwise.'). See also Lucas S. Michels, *A Blueprint for International TRIPS-plus Geographical Indications Protections? An analysis of geographical indication protection proposals in the European Union – India Bilateral Trade and Investment Agreement*, 15 Gonzaga J. Int'l L. 2 (2011-2012).

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Republic, Italy, Portugal and Spain makes the total number of registrations significant; France alone has more than five hundred.<sup>763</sup> Appellations of origin registered under the Lisbon Agreement stand to benefit from their higher level of recognition in the New gTLD Program by reason of their being ‘protected by a statute or treaty’ and thus eligible for inclusion in the Trademark Clearinghouse,<sup>764</sup> the database of authenticated legal rights that underpins several rights protection mechanisms available in new gTLDs.

While the International Register is the Lisbon Agreement’s most significant contribution to the cause of protecting geographical indications at the international level, it is equally a deterrent for those who oppose recognition. This explains the absence of ‘New World’ wine producing countries such as the United States, Australia, Chile and Argentina from the ranks of Lisbon Agreement signatories. This dichotomy continues to manifest itself in the negotiations called for by Article 23(4). Those negotiations, considered part of the TRIPS Agreement’s ‘built-in agenda’,<sup>765</sup> commenced in 1998. The intervening years have seen little progress beyond a volley of proposals authored on the one side by the European Community<sup>766</sup> and on the other by Japan and the United States, later joined by Canada and Chile.<sup>767</sup> Since the year 2000, these proposals have focused on two issues: first, the international notification system for wines and second, the extension of the additional degree of protection offered to wines and spirits to other products. For a time, the latter issue seemed to dominate discussions, with a surprising number of ‘New World’ countries joining in support<sup>768</sup> of extension amidst confusion as to whether the Doha Ministerial Declaration mandated this debate.<sup>769</sup> The Doha Ministerial Declaration set a deadline for decisions regarding the establishment of an international notification and registration system for the Fifth Session of the Ministerial Conference held in Cancun,

763. See WIPO, *Appellations of Origin*, <http://www.wipo.int/ipdl/en/lisbon/lisbon-map.jsp> (accessed 15 Oct. 2012).

764. ICANN, *New gTLD Applicant Guidebook*, Trademark Clearinghouse, section 3.2.5.

765. WTO Council for Trade-Related Aspects of Intellectual Property Rights, *Report (1996) of the Council for TRIPS*, Part III, (1996) IP/C/8 96-4704.

766. WTO Council for Trade-Related Aspects of Intellectual Property Rights, *Implementation of Article 23.4 of the TRIPS Agreement relating to the establishment of a multilateral system of notification and registration of geographical indications*, (2000) IP/C/W/107 Communication from the European Communities and their Member States, Rev. 1 00-2521.

767. WTO Council for Trade-Related Aspects of Intellectual Property Rights, *Proposal for a multilateral system for notification and registration of geographical indications based on Article 23.4 of the TRIPS Agreement*, (1999) IP/C/W/133/Rev.1 Communication from Canada, Chile, Japan and the United States, Rev. 1 99-3125.

768. WTO Council for Trade-Related Aspects of Intellectual Property Rights, *Proposal from Bulgaria, Cuba, Czech Republic, Egypt, Iceland, India, Jamaica, Kenya, Liechtenstein, Mauritius, Nigeria, Pakistan, Slovenia, Sri Lanka, Switzerland, Turkey and Venezuela (Revision)*, (2001) IP/C/W/247/Rev.1 01-2491.

769. See Gervais, 46-47. To clarify, ‘the Doha Declarations do not add to or diminish legal obligations. The question to be considered is whether there is flexibility within the WTO

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in late 2003.<sup>770</sup> That deadline has come and gone, and although progress was reportedly made in early 2011 in drafting a ‘composite text’ that sets out all of the views thus far expressed,<sup>771</sup> no agreement has been reached. Nor has agreement been reached on the issue of extension of protection.<sup>772</sup>

Were it not the case that geographical indications’ connection to goods otherwise barred the applicability in the DNS of the protection afforded them under the TRIPS Agreement, an international notification and registration system would greatly facilitate the allocation of geographical indication new gTLDs. Such a system already exists to a certain extent at a domestic level even in countries that do not protect geographic indications as such.<sup>773</sup> This occurs through trademark law in cases where geographical indications are able, most commonly as a collective mark, to satisfy registration criteria.<sup>774</sup> The availability of collective mark registration is but one of the many ways that TRIPS members have fulfilled their obligations to prevent misuse of geographical indications.<sup>775</sup>

One can envisage a notification system for rights in geographical indications functioning in a manner similar to the Trademark Claims service developed through ICANN’s New gTLD Program. This service is intended to put would be domain name applicants on notice of existing rights and offer them the choice of either terminating or continuing with a domain name application.<sup>776</sup> Owners of marks in the Trademark Clearinghouse are to be notified of completed registrations, thus putting them in a better position to challenge such registrations. The term ‘owners’ is not entirely appropriate in

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legal regime for binding legislative decisions that do not change obligations.’ Steve Charnovitz, *The Legal Status of the Doha Declarations*, 5 J. Int’l Econ. L. 207, 210 (2002).

770. *Doha WTO Ministerial Declaration*, Art. 18, WT/MIN(01)/DEC1, 20 Nov. 2001 (available at [http://www.wto.org/english/thewto\\_e/minist\\_e/min01\\_e/mindecl\\_e.htm](http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm)).

771. WTO, *Multilateral system of notification and registration of geographical indications for wines and spirits: Report by the Chairman, Ambassador Darlington Mwape (Zambia) to the Trade Negotiations Committee*, TN/IP/21, (21 Apr. 2011) (available at [http://www.wto.org/english/tratop\\_e/dda\\_e/chair\\_texts11\\_e/trips\\_e.doc](http://www.wto.org/english/tratop_e/dda_e/chair_texts11_e/trips_e.doc)).

772. See WTO, *Issues related to the extension of the protection of geographical indications provided for in Article 23 of the TRIPS Agreement to products other than wines and spirits and those related to the relationship between the TRIPS Agreement and the Convention on Biological Diversity: Report by the Director-General*, WT/GC/W/633 and TN/C/W/61 (21 Apr. 2011) (available at <http://docsonline.wto.org/imrd/directdoc.asp?DDFDocuments/t/WT/GC/W633.doc>).

773. See Justin Hughes, *Champagne, Feta, and Bourbon: The Spirited Debate about Geographical Indications*, 58 Hastings L.J. 299, 331 (2006) (discussing the level of regulatory intervention in France’s protection of appellations and the United States’ use of trademark law).

774. Collective marks are discussed in Part III, Chapter 5, section 5.3 above.

775. See n. 720 above and accompanying text. On the protection of geographical indications as collective marks under US law, see Beresford, 984.

776. The Trademark Clearinghouse is discussed in detail in Part II, Chapter 3, section 3.2.2 above.

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the context of geographical indications given their communal rather than individual nature,<sup>777</sup> but this fact does not impede the development of a register. The entrenched position of a number of States against more specific international protection of geographical indications makes the establishment of such a system unlikely, however, without a broader consideration of where they fit within the WTO Agreement framework and other issues arising under the Doha trade negotiations mandate.<sup>778</sup>

### 7.3.2 CONFLICT BETWEEN TRADEMARKS AND GEOGRAPHICAL INDICATIONS

While it is certainly the case that registration as a standard, collective or certification mark has advantages for geographical indications, the availability of multiple forms of protection raises the potential for conflict between them. Despite having been considered conceptual ‘equivalents’ in the context of a comparison of European Union and domestic legislation,<sup>779</sup> geographical indications and trademarks (all forms) are distinctly separate subject matter under international law, and the legal rights in them do not in all circumstances align.

The first problem lies in the issue of priority as between trademarks and geographical indications. In other words, where one rights holder claims rights in a trademark and another in the same name as a geographical indication, which one prevails? While the Paris Convention operates from a ‘first in time, first in right’ principle, it has been considered that this is limited to trademarks as against other trademarks.<sup>780</sup> This does not resolve the conflict but rather re-characterizes the issue to be resolved in terms of “who has the better right to use a geographical name?”, and not “who used a geographical name first?”<sup>781</sup>

The Lisbon Agreement, perhaps unsurprisingly given that it offers the highest level of protection of the existing international conventions, gives a measure of priority to protected appellations of origin. Article 5(3) of that agreement requires that States protect an internationally registered appellation unless it is declared within a year that the State is unable to ensure protection. Grounds for such a declaration are not specifically provided in the agreement, but it is presumed that an appellation’s treatment as generic or the

777. See Conrad, 12; Calboli, 185.

778. See Cottier & Panizzon, *Traditional Knowledge and Geographical Indications*.

779. Lionel Bently & Brad Sherman, *The Impact of European Geographical Indications on National Rights in Member States*, 96 *Trademark Rep.* 850, 877-878 (2006). Bently and Sherman further note that the authors of *Kerly’s Law of Trade Marks and Trade Names*, Britain’s leading treatise on trademark law, support this view.

780. See O’Connor, *The law of geographical indications*, 115.

781. *Ibid.*

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existence of prior rights would fall within this ambit.<sup>782</sup> Where a declaration is not made, conflicting prior rights must be phased out within two years pursuant to Article 5(6).

The presumed prevailing position on priority under the TRIPS Agreement is that Article 16 confers priority on a first registered trademark,<sup>783</sup> but this is not a universally held view.<sup>784</sup> Under the heading 'Rights Conferred', Article 16(1) gives trademark owners the exclusive right to prevent the use of 'identical or similar signs'. The loose definition of 'signs' in Article 15 (headed 'Protectable Subject Matter') suggests that this priority is conferred only as against other trademarks. Article 24(5), on the other hand, provides:

Where a trademark has been applied for or registered in good faith, or where rights to a trademark have been acquired through use in good faith either:

- a. before the date of application of these provision in that Member as defined in Part VI; or
- b. before the geographical indication is protected in its country of origin;

measures adopted to implement this Section shall not prejudice eligibility for or the validity of the registration of a trademark, or the right to use a trademark, on the basis that such a trademark is identical with, or similar to, a geographical indication.

On its face, Article 24(5) suggests a reprise of the 'first in time, first in right' principle, whereby one party is able to use and the other not. Advocates of this interpretation call upon Article 16(1) for support, positing:

[A] right to use must include the minimum rights in respect of trademarks under the Agreement. As such, this right to use would not simply mean a right to register and continue to use in spite of the presence of an identical or similar geographical indication, but in fact a right to exclude the geographical indication concerned.<sup>785</sup>

The important question is not only one of priority, but of whether the TRIPS Agreement permits co-existence between trademarks and geographical indications. It is very clearly the case that the TRIPS Agreement permits some co-existence of conflicting geographical indications due to its allowance for homonymous indications for wines in Article 23(3). The effect of Article 24(5) is greatly reduced if, read in conjunction with the reference to

<sup>782</sup> *Ibid.*, 115-116.

<sup>783</sup> See Burkhardt Goebel, Presentation, *Geographical Indications and Trademarks: The Road from Doha* 8 (WIPO & USPTO Worldwide Symposium on Geographical Indications 9-11 Jul. 2003) WIPO/GEO/SFO/03/11.

<sup>784</sup> See for example, O'Connor, *The law of geographical indications*, 118 (concluding that trademarks and geographical indications receive equal protection under TRIPS).

<sup>785</sup> Gervais, 315-316.

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it in Article 24(1), it is interpreted as establishing a ‘first-in-time, first-in-right’ principle in respect of wine and spirit geographical indications only. The use in Article 24(5) of the term ‘Section’, however, suggests that it refers to the entire section 3 of the TRIPS Agreement, comprised of Articles 22, 23 and 24, ‘and not to a “section” in the sense of an “article” as that term is used in the national laws of several countries.’<sup>786</sup> An alternate interpretation of Article 24(5) permits co-existence of conflicting geographical indications and trademarks as the natural consequence of Article 24(5) not obliging TRIPS members to:

provide the protection of geographical indications if an identical or similar trademark has been registered in good faith. However, if this protection is provided (and there is clear possibility to provide this protection), it should not ‘*prejudice eligibility for or the validity of the registration of a trademark, or the right to use a trademark.*’ (emphasis in original)<sup>787</sup>

Neither interpretation can be supported by evidence of a relevant intention on the part of the TRIPS Agreement drafters, but both sides assert compatibility with the text of the Agreement itself.<sup>788</sup> While there are ways of avoiding or resolving conflict using the legal frameworks in place,<sup>789</sup> in the specific context of the DNS it has been shown earlier in this chapter that co-existence at the top-level is extremely difficult – if not impossible – due to the technical requirement of absolute uniqueness braced by ICANN’s disallowance of confusingly similar TLD strings. Conflicts can potentially be managed in second and lower level domain names through differentiation (unless a TLD registry operator implements policy to disallow confusingly similar domain name registrations by registrants, a policy that would be burdensome to police), but just as there cannot be two .rioja TLDs to represent both of the regions referred to by that name, there cannot be two .rioja TLDs to represent each of a geographical indication and a trademark.

The need to decide on priority as between applicants for new gTLDs will inevitably arise in top-level expansion. Where conflicts arise within a country, national laws can be relied upon. Where conflicts arise between applicants in different countries that treat geographical indications differently, some means of resolution is patently needed. Drawing from existing means of conflict resolution, the two clearest options that take into consideration the legal interest involved rather than simply resolving a

<sup>786</sup> *Ibid.*, 315.

<sup>787</sup> O’Connor, *The law of geographical indications*, 63.

<sup>788</sup> *Ibid.* See also Gervais, 315-316.

<sup>789</sup> See *European Communities – Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs – Complaint by Australia, Report of the Panel*, 150 para. 7.686, WT/DS290/R 05-0936 (W.T.O. D.S.B. Panel 15 Mar. 2005) (finding that co-existence is a limited exception under TRIPS Art. 17); O’Connor, *The law of geographical indications*, 119-121.

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dispute in favour of the party able to pay the most as in an auction are (i) to adopt a 'first in time, first in right' rule; or (ii) to apply unfair competition principles. The latter are discussed in detail in the next chapter, though it can be said as an initial point that this is administratively the more complex approach. From the perspective of ease and efficiency of domain name registration, it is likely preferable to base priority on timing, although this creates inequities between countries with protection of geographical indications and countries without such protection.<sup>790</sup> ICANN's having undertaken to ensure that new gTLDs do not conflict with existing legal rights recognized under international law means that unfair competition issues must be considered.

### 7.3.3 IMPLICATIONS FOR LISBON AGREEMENT SIGNATORIES

A further issue arises with respect to new gTLDs for strings meeting the definition of 'appellation of origin'. Members of the Lisbon Union are required pursuant to Article 1 to protect appellations of origin 'as such'. Article 3 demands absolute protection 'against any usurpation or imitation, even if the true origin of the product is indicated or if the appellation is used in translated form or accompanied by terms such as "kind," "type," "make," "imitation," or "the like".' This level of protection contrasts sharply with that offered to geographical indications under Article 22 of the TRIPS Agreement, which requires that Member States prevent only uses in connection with goods and constituting an act of unfair competition pursuant to Article 10*bis* of the Paris Convention.

The greater level of protection offered by the Lisbon Agreement operates to prevent the making of a new gTLD application for a string comprised of an appellation of origin notified under that agreement by an unauthorized party because the signatories are, as WIPO explains, 'under the obligation to provide a means of defence against any usurpation or imitation of an appellation of origin in their territory.'<sup>791</sup> It is plausible that the registration of a new gTLD comprised of a notified appellation by a party not associated with the notification would be deemed to constitute a 'usurpation or imitation'. In order to comply with the Lisbon Agreement, signatories' domestic law must therefore prevent the registration of new gTLDs by those not otherwise entitled to do so.

This creates an uneven playing field in ICANN's New gTLD Program. A new gTLD applicant in France must be prevented from applying for a

<sup>790</sup> See Conrad, 42-43. See also Rimmer, 12 (highlighting problems of free riding).

<sup>791</sup> WIPO, *The Lisbon Agreement for the Protection of Appellations of Origin and their International Registration: Objective and Main Features, Protection to be Accorded*, <http://www.wipo.int/lisbon/en/general/> (accessed 15 Oct. 2012).

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.tequila new gTLD,<sup>792</sup> for example, but an applicant in China, not a signatory of the Lisbon Agreement, need not be so prevented. Similarly, a new gTLD applicant in Slovakia must be prevented from applying for a .pilsner<sup>793</sup> new gTLD, but an applicant in the United States, a country with a recognized beer industry but not a signatory of the Lisbon Agreement, need not be so prevented, and so on for all of the notified applications currently in the International Register of Appellations of Origin. ICANN's *gTLD Applicant Guidebook* does not itself give rise to a violation of the Lisbon Agreement, but Lisbon Union members must be aware of their obligations under that agreement in order to ensure that actions taken in the context of ICANN's New gTLD Program are not in breach.

#### 7.4 CONCLUSIONS ON RIGHTS IN GEOGRAPHICAL INDICATIONS

All top-level domain strings constituted of geographical indications, regardless of the type of goods they identify, fall outside of the limited scope of protection offered to geographical indications under the TRIPS Agreement. This is a different conclusion than the one reached in the WIPO II Report, which found that the TRIPS Agreement was insufficient to prevent registrations of second-level domain names lacking a connection to goods. Critically, top-level domains represent a service. They facilitate interaction between second-level domain name registrants and therefore do not have a direct connection to goods. While the establishment of an international register could facilitate the registration of domain names constituted of geographical indications, this would benefit only second- and lower level domain names the use of which is directly connected to goods. The much-disputed international register, regardless of what form it could ultimately take, is of no consequence to geographical indications' use at the top-level of the DNS. This conclusion does not have any bearing on the presumed exclusive right of governments to geographic names in ICANN's *gTLD Applicant Guidebook*.

The holders of 'offline' legal rights in geographical indications are not, however, entirely foreclosed from exercising their rights in the New gTLD Program. Geographical indications 'protected by a statute or treaty'<sup>794</sup> are eligible for inclusion in the Trademark Clearinghouse, making them eligible

792. This is due to the existence of the registration TEQUILA: Notification No. 699 by the Government of Mexico, accessible through WIPO Lisbon Express searchable database at <http://www.wipo.int/ipdl/en/search/lisbon/search-struct.jsp> (accessed 15 Oct. 2012).

793. This is due to the existence of the registration PLZEN/PILSEN PILS/PILSENER/PILSNER: Notification No. 1 by organizations in the Czech Republic, accessible through WIPO Lisbon Express searchable database at <http://www.wipo.int/ipdl/en/search/lisbon/search-struct.jsp> (accessed 15 Oct. 2012).

794. ICANN, *New gTLD Applicant Guidebook*, Trademark Clearinghouse, section 3.2.5.

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to participate in sunrise and the Trademark Claims service in new gTLDs. Further, the *gTLD Applicant Guidebook*, UDRP and Uniform Rapid Suspension procedure do not differentiate standard trademarks from other forms of trademark. Registration of a geographical indication as a standard, collective or certification mark in countries in which registration criteria can be satisfied has the effect of elevating an indication to a higher level of recognition in DNS policy.

Finally, special care must be taken by Lisbon Union members to take steps to prevent the ‘usurpation or imitation’ of notified indications through their registration as a new gTLD by someone other than a notifying party. At a minimum, this is an issue that GAC members should consider within the purview of the ‘early warning’ review process available to them under ICANN’s *gTLD Applicant Guidebook*.

## Chapter 8

# Unfair Competition and Related Commercial Rights in Geographic Names

What is honest is not dishonest.<sup>795</sup>

### 8.1 UNFAIR COMPETITION LAW PRINCIPLES APPLIED TO GEOGRAPHIC NAMES

#### 8.1.1 THE POTENTIAL OF UNFAIR COMPETITION LAW

Unfair competition law has high potential as a source of rights in geographic names given its traditional role as ‘gap filler’ where rights are not recognized in subject matter as such under intellectual property law or related *sui generis* regimes.<sup>796</sup> Even where intellectual property rights are recognized, in many jurisdictions it is common practice to raise claims in the nature of unfair competition in addition to intellectual property infringement claims. That said, one must be careful to recognize the different natures of protection offered by these distinct sources of rights: in the specific context of the protection of names, trademark law protects a private property interest in a name as such, while unfair competition law regulates commercial behaviour

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795. Bowen, LJ in *Angus v. Clifford*, 60 L.J. Rep. (N.S.) C.D. 456 (1891).

796. On the traditional role of unfair competition law, see Gustavo Ghidini, *Intellectual Property and Competition Law: the innovation nexus* 112 (Edward Elgar 2006).

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affecting competitors or consumers.<sup>797</sup> In other words, unfair competition law does not confer an exclusive proprietary right on an individual party, but rather aims to benefit the market as a whole. Whether this difference has any effect in actual practice is, however, questionable; it is said that ‘there are overlaps for which a convincing theory has yet to be found.’<sup>798</sup>

Unfair competition law is based on a fundamentally simple understanding ‘that dealings based on deceit are legally wrong.’<sup>799</sup> It is primarily addressed at the international level by the Paris Convention for the Protection of Industrial Property, Article 1(2) of which identifies ‘the repression of unfair competition’ as one of that convention’s express objects.<sup>800</sup> Accordingly, Article 10*bis* (1) requires that members of the Paris Union provide ‘effective protection against unfair competition’, which Article 10*bis* (2) defines broadly as ‘[a]ny act of competition contrary to honest practices in industrial or commercial matters’. Relatedly, Article 10 requires members to prevent the ‘direct or indirect use of a false indication of the source of the goods or the identity of the producer, manufacturer, or merchant.’

This definition of ‘unfair competition’ in the Paris Convention uses fairly broad, general terms, leaving Paris Union members to determine how best to meet their obligations in domestic law. The analysis undertaken in this chapter shows this nevertheless to be the most inclusive attempt to target unfair competition in an international convention to date. The TRIPS Agreement is notably silent on unfair competition save for limited references to Article 10*bis* of the Paris Convention: Article 22(2)(b) in the context of prohibited uses of geographical indications and Article 39 in the context of protecting undisclosed confidential information. Article IX:6 of the GATT Agreement, which is discussed below in this chapter, merely requires members to ‘co-operate’ to prevent false representations of product origins.

Problematic from the perspective of protecting rights in geographic names is the fact that – as with the law of trademarks – the law of unfair competition has at its heart commercial activity. Indeed, it is said that ‘the first prerequisite [of unfair competition] is that the conduct must not be private, social or political, but must be commercial.’<sup>801</sup> This and other core principles of unfair competition law place considerable strain on its ability to offer all geographic names (not simply sub-sets such as geographical

797. See WIPO, *Protection against unfair competition: analysis of the present world situation*, WIPO Publication No. 725, 10 (1994).

798. Frauke Henning-Bodewig, *Unfair competition law: European Union and Member States* 5 (Kluwer Law International 2006).

799. *Black’s Law Dictionary* 1667 (Bryan A. Garner & Henry Campbell Black eds., West 2009) (definition of ‘unfair competition’).

800. Alternatively it has been posited that ‘the aim of the PC was the international protection of industrial property rights and not the protection against unfair competition.’ *Law against unfair competition: towards a new paradigm in Europe?* 54 (Reto M. Hilty & Frauke Henning-Bodewig eds., Springer 2007).

801. Henning-Bodewig, 1.

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indications or geographically-named certification marks) blanket protection against unfair use. Gap filler it may be, but unfair competition law is not the solution to every problem. This is true even if the problem is a squarely commercial one (which for geographic names is frequently not the case) because '[n]ot everything that is regarded as "unfair" in the commercial sector falls under unfair competition law.'<sup>802</sup>

The aim of this chapter is to determine whether governments or others have rights under unfair competition law that justify preventing the registration of geographic names as new gTLDs. It begins with an examination of the purposes and general principles of unfair competition law and their application to geographic names, then turns to an evaluation of four specific categories of commercial behaviour in order to identify situations in which registration of geographic new gTLDs could potentially be prevented. It is also pointedly considered whether the lodging of an application for a new gTLD without the authorization of an 'offline' rights holder constitutes an act of unfair competition such that limitations should be implemented in top-level domain policy in respect of geographical indications.

### 8.1.2 PURPOSES OF UNFAIR COMPETITION LAW

Unfair competition law has long played a key role in the resolution of domain name disputes, albeit in a somewhat disguised form: the Uniform Domain Name Dispute Resolution Policy (UDRP) draws heavily from the unfair competition provisions of the Paris Convention.<sup>803</sup> The applicability of that policy to domain names constituted of trademarks (the only type of name actionable under the policy) should not, however, be automatically imputed to other subject matter, particularly when proposals to widen the scope of the UDRP have previously been rejected due to lack of support in international law.<sup>804</sup> Rather, it should be questioned as a starting point whether limiting the use of geographic names in the DNS on the basis of unfair competition – whether through the UDRP or otherwise – is consistent with the principles and purposes of unfair competition law.

There is no universally agreed singular purpose of unfair competition law, nor an all-inclusive enumeration of acts that constitute unfair competition.<sup>805</sup> Rather, this is an area of law that is 'deeply rooted' in domestic law and, as a result, has developed in different ways to prevent different forms of

802. *Ibid.*, 1.

803. See WIPO, *WIPO I Report*, paras 172-174.

804. See n. 362 above and accompanying discussion on the scope of the UDRP.

805. See Henning-Bodewig, 19 (observing that 'relatively scant attention has been paid ... to the international competition law anchored in Article 10bis and 10ter of the Paris Convention').

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commercial behaviour in different jurisdictions.<sup>806</sup> The Paris Convention preserves these differences by leaving to its members the decision of how to identify and remedy unfair competition. In some countries, this means protecting competitors from each other's unscrupulous practices. Unfair competition law in the United States and England, for example, has as its general focus the defendant who 'poaches upon the commercial magnetism of [a] symbol'.<sup>807</sup> Other countries, such as Spain and Germany, take a broader view of unfair competition law and use it to control not only acts that harm competitors but those that harm consumers.<sup>808</sup> This dual-headed protection is recognizable in Article 22 of the TRIPS Agreement, which sets out the protection available to geographical indications: while Article 22(2)(a) 'is aimed at representations misleading the public, i.e., consumers', Article 22(2)(b) 'protects the interests of producers and merchants' through the application of Article 10*bis* of the Paris Convention.<sup>809</sup>

An understanding of the types of behaviour captured by unfair competition law first requires an understanding of the purposes of unfair competition law. Identifying behaviour that is 'unfair' requires 'taking into account particularly the interests of those "concerned" by it, namely the parties involved in the operation of the marketplace.'<sup>810</sup> When one considers these interests, four central purposes of unfair competition law emerge. When geographic names are tested against these, there is reason to question the appropriateness of relying on unfair competition law to protect them.

### **8.1.2.1 Promote Honesty in Commercial Dealing**

At the heart of unfair competition law is the notion of fairness and, by corollary, the prevention of unfairness, which Article 10*bis* (2) of the Paris Convention characterizes as acts 'contrary to honest trade practices'. Honesty in this context is less a moral concept than a normative concept derived from the marketplace in question. As such, it is measured according to 'what is actually usual in business life ("trade practices"),' and then 'corrected by the ethical aspect of "honest".'<sup>811</sup>

The focus on commercial dealings in unfair competition law is problematic for geographic names because many of their uses are non-commercial in nature (e.g., maps, signs, official documents and news reports). For these sorts of uses there is not a relevant trade or marketplace

806. *Introduction to Intellectual Property: Theory and Practice* 246-248 (WIPO ed., Kluwer Law International 1997).

807. *Mishawaka Rubber & Woolen Mfg. Co. v. S.S. Kresge Co.*, 316 U.S. 203, 205 (Sup. Ct. 1942).

808. See Henning-Bodewig, 2-3. See also WIPO, *Protection against unfair competition*, 15-17.

809. Conrad, 36.

810. WIPO, *Protection against unfair competition*, 24-25.

811. Henning-Bodewig, 9.

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from which to draw the requisite standard of honesty in business. There can be no commercial unfairness in the activity of providing information outside of trade in goods or services. This is not to suggest that honesty and fairness have no place in non-commercial contexts, but rather to highlight the fact that unfair competition laws cannot be relied upon to control that sort of behaviour.

Where unfair competition law has traditionally been applied in the context of geographic names is in the regulation of origin statements. Across trades and industries it has long been the expectation that where information is provided to convey the origin of a product, that information must be truthful. To behave otherwise cuts against the basic notion of honest trade practices; this is equally the case online as it is offline. Some statements are easily identifiable as connotative of origin, such as 'Made in the USA' and 'Swiss chocolate'. Geographic domain names at any level of the DNS are less easily discernible as per se connotative of origin, however. There are several reasons for this. The DNS is a global communications system the structure of which is not organized along territorial lines. Some ccTLDs are operated outside of the country represented by the country code and are targeted at domain name registrants with no connection to that country.<sup>812</sup> There is no general rule in generic or country-code TLDs that applicants of geographic second-level domain names must be physically present in the geographic territory named. Whether geographic domain names constitute a dishonest statement of origin is therefore one of the core questions to be explored in detail in the next section of this chapter.

### **8.1.2.2 Promote and Protect Investment by Business**

Consistent with justifications of intellectual property law on the basis of reward theory,<sup>813</sup> unfair competition laws are grounded in the belief that offering protection to intangible business assets such as goodwill and confidential information against unfair usurpation is a necessary incentive to

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812. Tuvalu's .tv ccTLD is an example. Recognizing the unique online opportunities inherent in its ISO 3166-1 country code, the Tuvaluan government commenced a tender process for the marketing of .tv ccTLDs in the mid-1990s. See Stephen Boland & Brian Dollery, *The Value and Viability of Sovereignty-Conferred Rights in MIRAB Economies: The Case of Tuvalu*, University of New England Working Paper Series in Economics 2005-2009, 17 (available at <http://www.une.edu.au/business-school/working-papers/economics/1999-2007/econ-2005-9.pdf>). Verisign has operated the .tv domain since its acquisition of The .tv Corporation at the end of 2001. *Verisign Acquires The .tv Corporation*, PR Newswire (7 Jan. 2002) (available at <http://www.prnewswire.com/news-releases/verisign-acquires-the-tv-corporation-75291122.html>). See also IANA, *Delegation Record for .TV*, <http://www.iana.org/domains/root/db/tv.html> (accessed 15 Oct. 2012).

813. See for example, Justin Hughes, *The Philosophy of Intellectual Property*, 77 *Geo. L.J.* 287, 305-310 (1988-1989).

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ensure their creation.<sup>814</sup> Protection by means of unfair competition law is all the more important to businesses when their assets are not able to be characterized (and therefore protected) as intellectual property. Justifying protection for geographic names on this basis is not, however, an easy fit.

Outside of their use as brands, it is difficult to conceptualize the creation of geographic names as occurring through some sort of planned, strategic, commercial process of asset generation. It is likewise difficult to characterize the creation of new geographic names as an activity that requires regulatory intervention to ensure its continuation. What immediately distinguishes the name 'France' from the name 'Polaroid' is that the latter has been created in a commercial environment for use in a commercial environment, and logically therefore derives its value from commercial attractiveness. The name 'Polaroid' must be distinctive – in other words, able to distinguish the goods or services on which it is used as originating from a particular trader – if it is to succeed in the marketplace. That distinctiveness can arise because the name is coined and has no other connotation or because it develops a reputation through use; either way, a certain degree of 'investment, labor, and strategic dissemination' is required in order to 'create[] a set of unique meanings in the minds of consumers'.<sup>815</sup> This is the primary function of a brand, the legal protection of which takes the form of a trademark.

Geographic names, by contrast, are not products of a commercially-oriented development process and their primary function is not to create a link in consumers' minds between particular goods or services and a particular trader. Their primary function is to identify a particular geographic location. Even if no other connotation is generated in a person's mind by a geographic name, if the name serves to identify the correct place on the map to which it is attributed, it is a success. Achieving this sole purpose has not traditionally involved focus groups or market surveys; the choice of a geographic name is not tested for its ability to attract consumers. These observations are not made with the intention of suggesting that strategy has no role to play in the choice of geographic names; the dispute between Greece and the former Yugoslav Republic of Macedonia over the name 'Macedonia'<sup>816</sup> offers ample room for speculation about motives in countries' naming decisions. Rather, the intention here is to highlight the fact that businesses and countries take different things into consideration and do so for different reasons when making naming decisions. These differences call into question the appropriateness of justifying the protection of geographic names under unfair competition law on the basis of ensuring geographic names' continued use and creation.

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814. See *Restatement of the Law (Third): Unfair Competition* §1 Comment f (1995).

815. Coombe, 61 (internal citations omitted).

816. The 'Macedonia' name dispute is discussed in detail in Part III, Chapter 6, section 6.3.2 above.

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Where investment in a corporate sense is being made in the context of geographic names is in goodwill. Countries are increasingly seen as brands,<sup>817</sup> with reputations that can be managed with a view to creating 'a desirable identity which consumers can relate to and want to build a repeat purchase relationship with'.<sup>818</sup> This is not a new phenomenon; governments and tourist bureaus have long been using reputation to entice the tourist consumer. What is new, however, is that more attention is being paid to geographic brands, whose effectiveness and value are now measured on an annual basis similar to the way in which the world's most valuable trademarks are ranked each year.<sup>819</sup>

In many countries, unfair competition law steps in to protect investment in goodwill, but protecting goodwill is not the same as protecting a name. This is because names and goodwill are two distinct (though related) concepts: goodwill is comprised, according to an oft-cited Australian judicial opinion, of 'elements',<sup>820</sup> of which the name is but one:

As the differential profit advantage of a firm, goodwill may arise from superior efficiency, from convenience, from confidence, from nepotistic connections, from persuasive advertising, from successful infringement of a persuasive symbol, from threats of violence, and so on into a range of conduct entirely beyond the pale of the law.<sup>821</sup>

Correspondingly, the goodwill of a country or other geographic location (and thus its attractiveness to consumers) is likely to be influenced not only by its name but by its exports, the stability and form of its government, its culture and heritage, the friendliness of its people, its tourism, its topography, its propensity to experience natural disasters, etc.<sup>822</sup> The name is a powerful symbol which encapsulates these qualities and brings them to the public mind similar to the way in which the 'Polaroid' brand 'through much effort and the expenditure of large amounts of money had acquired a widespread reputation and much goodwill'.<sup>823</sup>

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817. See FutureBrand, *Country Brand Index 2011-2012*, <http://www.futurebrand.com/think/reports-studies/cbi/2011/overview/> (accessed 15 Oct. 2012). See generally, Forrest, *The new frontier*, 133-134.

818. Allan Bonsall & John Harrison, *Brand Aid: The Secrets of Consumer Speak* 26 n. 21 (Esstee Media 2006).

819. See for example, FutureBrand, *Country Brand Index 2011-2012*; GfK Custom Research North America, *The Anholt-GfK Roper Nation Brands Index 2012*, [http://www.gfkamerica.com/practice\\_areas/roper\\_pam/nbi\\_index/index.en.html](http://www.gfkamerica.com/practice_areas/roper_pam/nbi_index/index.en.html) (accessed 15 Oct. 2012).

820. *Commissioners of Inland Revenue v. Muller & Co's Margarine, Ltd.*, A.C. 217, 223 (H.L. 1901).

821. Ralph S. Brown Jr., *Advertising and the Public Interest: Legal Protection of Trade Symbols*, 57 Yale L.J. 1165, 1199 (1948) (internal citations omitted).

822. See GfK Custom Research North America, *The Anholt-GfK Roper Nation Brands Index 2012*.

823. *Polaroid Corp. v. Polaroid, Inc.*, 319 F.2d 830, 837 (7th Cir. 1963).

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Geographic names are and have for ages been created and used despite a lack of clear protection for them under international law. While there may be need of unfair competition law to protect governments' investments in goodwill, there is little need of unfair competition law to ensure the continued creation and use of geographic names. For this reason, protection of geographic names under unfair competition law can be more transparently characterized as fuelled by a desire to preserve a monopoly in a name than a desire to encourage more names' creation and use.

### **8.1.2.3 Promote Competition and Efficiency in the Market**

There is a great paradox inherent in unfair competition law, which is that the exercise of a right to demand that others not engage in anti-competitive conduct in the name of promoting competition has inherently and unavoidably anti-competitive consequences. Unfair competition law must strike a balance between 'protect[ing] the competitive position of the enterprise' and preventing 'business practices that hinder rather than promote the efficient operation of the market.'<sup>824</sup> It is not controversial to propose that a certain degree of competitive behaviour is needed to promote a healthy marketplace. It would not be appropriate, therefore, for unfair competition law to be overzealous in quashing acts aimed at gaining a competitive advantage. A seminal American text on unfair competition law succinctly explains the situation in this way:

Every competitor seeks to win trade that would otherwise go to someone else. The ultimate end point of that process could conceivably be the complete elimination of one or more rivals as effective competitors. Yet there is no violation of the law so long as the rules of the 'game' are observed. Thus it is not the injury suffered by the complainant which makes competition unfair, it is the competitor's violation of a duty to keep his competition within certain bounds.<sup>825</sup>

The striking of those bounds is made all the more difficult when the behaviour at issue is potentially non-commercial in nature, as in the case of geographic names. Although they can be used commercially, geographic names' primary function as informational identifiers makes it difficult to distinguish competitive uses from anti-competitive uses. It is inappropriate to simply presume that all uses of geographic names are anti-competitive unless proven otherwise: such a drastic measure would have the benefit of preventing free riders, but could also seriously impinge upon the rights of the public to use geographic names in non-competitive, non-commercial ways.

<sup>824</sup> *Restatement (Third) of the Foreign Relations Law of the United States* §1 Comment g.

<sup>825</sup> Rudolf Callmann & Louis Altman, *Callmann on unfair competition, trademarks and monopolies* §1:9 (4th ed., Thomson-West 1997).

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The intention of unfair competition law is said first and foremost to be to protect the market as a whole, while ‘the protection of monopolies in names is but a secondary and limiting policy.’<sup>826</sup> When potentially non-commercial subject matter such as a geographic name is involved, special consideration must be given to the balance between protecting the interests a government may have in a name and protecting the public’s right to use that name in a non-commercial context. If the use at issue is non-commercial, then unfair competition law is not the appropriate means of regulating that behaviour.

Commercial use is not in question for geographical indications due to their origin-connoting role and direct link to products, making unfair competition law particularly relevant to this specific type of geographic names. Accurate origin information can help consumers identify, distinguish and select goods and services, and it has been suggested that these things have a significant impact on the operation of a market.<sup>827</sup> Geographical indications are a specifically defined type of geographic name, however, and the assumption that all uses of all geographic names – commercial and non-commercial, online and offline, origin-connotative and otherwise – by someone other than relevant governments are unfair places unjustified impediments on many uses of names not falling within the scope of unfair competition law.

If the balance in unfair competition law is tipped in entirely favour of a government asserting rights in a geographic name to the exclusion of others’ use of the name, it is difficult to fulfil any of the other purposes of unfair competition law. At greatest risk are consumers, who suffer the effects of a legally-supported monopoly.<sup>828</sup> The result of the great paradox of unfair competition law is that in the name of encouraging a competitive marketplace, consumers end up with fewer choices. That said, the law has long questioned consumers’ ability to make choices, and in some countries, ensuring their protection is itself considered a purpose of unfair competition law.

#### **8.1.2.4 Protect Consumers**

Not all jurisdictions view unfair competition law as an appropriate means of protecting consumers from the unscrupulous behaviour of merchants. The aim of consumer protection law from an economic point of view is to reduce

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826. *Eastern Wine Corp. v. Winslow-Warren Ltd.*, 137 F.2d 955, 959 (C.C.A. 2d. 1943) (opinion of Frank, J).

827. See Bowers, 135. *Compare* Broude, 662-678.

828. See Coombe, 65-66. Coombe highlights the anti-democratic effect of control over names in the context of trademarks, but her remarks could also logically apply to geographic names.

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the knowledge and experience gap between buyer and seller.<sup>829</sup> This aim must be balanced with, *inter alia*, the right of freedom of expression, albeit with the recognition that commercial speech may be deemed to warrant less protection than non-commercial speech.<sup>830</sup> There is no universal standard as to what constitutes commercial speech, and the particular challenges of distinguishing commercial and non-commercial use in relation to domain names have been discussed in detail in Part III Chapter 5.2.2, above.

The long-held assumption that the consumer 'always aspires to follow the lead of the advertiser, and to have his hand guided in the supermarket'<sup>831</sup> has morphed almost seamlessly from the offline environment to the online environment. In fact, early cases of online confusion deemed it even more likely that consumers would suffer confusion on the internet than in the bricks-and-mortar environment because of the difficulties of determining the identity and legitimacy of a website's owner.<sup>832</sup> The comical aphorism, 'On the internet, nobody knows you're a dog',<sup>833</sup> precisely identifies this problem as well as the public's consciousness of it. It is this concern that motivated ICANN's Governmental Advisory Committee to limit registration of country names as second-level domain names in the newly delegated .info gTLD.<sup>834</sup> As to whether consumers actually require this sort of protection is, however, debatable.

Not all courts or scholars have assumed the gullibility of the (offline or online) consumer. In 1925 it was argued that there were many consumers for whom 'complete indifference reigns. The buyer cannot be deceptively confused if he does not care whether he gets Thinsies or Thins.'<sup>835</sup> Yet the way in which modern consumers use the internet to find information makes it unlikely that 'complete indifference reigns'. To the average contemporary online shopper may even be attributed more savvy than ignorance; the vast numbers of results yielded by existing internet search methods and tools suggest that users may reasonably be presumed to have even lower expectations of immediately finding what they seek online than offline. In the California case of *The Network Network v. CBS, Inc.*<sup>836</sup> it was provocatively suggested more than a decade ago:

829. See John Vickers, Lecture, *Economics for consumer policy* 8-9 (British Academy Keynes Lecture, 29 Oct. 2003) (available at [http://www.oft.gov.uk/shared\\_ofst/speeches/spe0403.pdf](http://www.oft.gov.uk/shared_ofst/speeches/spe0403.pdf)).

830. See for example, *Hertel v. Switzerland* (59/1997/843/1049) Eur. Ct. H.R. (1998).

831. Brown Jr, 1197 (internal citations omitted).

832. See for example, *Brookfield Communications, Inc. v. West Coast Entertainment Corp.*, 50 U.S.P.Q.2d (B.N.A.) 1545, 1559-1560 (9th Cir. 1999).

833. Peter Steiner, 69(20) *New Yorker* 61 (5 Jul. 1993).

834. The reservation of country names in the .info TLD is discussed in detail in Part II, Chapter 3, section 3.2.1.1 above.

835. Brown Jr, 1197 (internal citations omitted).

836. *The Network Network v. CBS, Inc.*, 54 U.S.P.Q.2d (B.N.A.) 1150, 1155 (C.D. Cal. 2000). See also *Bruce Springsteen v. Jeff Burgar and Bruce Springsteen Club*, Case No. D2000-1532 (WIPO Arbitration and Mediation Center 25 Jan. 2001) (available at <http://>

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There is a difference between inadvertently landing on a website and being confused. Thousands of Internet users every day take a stab at what they think is the most likely domain name for a particular website. Given the limited number of letters in the alphabet, and the tendency toward the use of abbreviations in commerce generally and in domain names in particular, it is inevitable that consumers will often guess wrong.

Similar views have been expressed outside of the United States,<sup>837</sup> but they have not taken hold in domain name policy. That the WIPO II Report was aimed specifically at 'misleading'<sup>838</sup> uses of names in the DNS suggests that those who call for a measure of common-sense and *caveat emptor* to be applied in the wilderness that is the internet are outnumbered by those who believe the average web user to be at a disadvantage. If such a disadvantage truly exists, then unfair competition law may indeed be a useful tool to address this problem in those countries that ascribe to unfair competition the purpose of protecting consumers. As the internet and our dependence upon it as an everyday means of communication grow, it is difficult to say whether users have become savvier and adjusted their expectations accordingly, or whether the potential for confusion has increased along with the volume of information available. The future applicability of unfair competition law to online commercial behaviour will depend heavily upon the way in which the DNS develops and is used following the addition of hundreds of new top-level domains into the root through ICANN's New gTLD Program.

In conclusion, it can be said that the protection of geographic names is not a natural fit within unfair competition law. It is difficult to draw analogies between countries and businesses, and geographic names' primary function as non-commercial identifiers means that to the extent that their protection under unfair competition law can be justified, that protection must necessarily be limited to preventing only those unfair uses that are distinctly commercial in nature and falling within the sorts of activities deemed 'unfair'. Unfair competition law has proven not to be needed to ensure the continued creation and use of geographic names, but it may have a role to play in protecting online consumers against being misled in countries that

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[www.wipo.int/amc/en/domains/decisions/html/2000/d2000-1532.html](http://www.wipo.int/amc/en/domains/decisions/html/2000/d2000-1532.html) (remarking that 'it is relatively unlikely that any user would seek to go straight to the internet and open the site <bruce springsteen.com> in the optimistic hope of reaching the official Bruce Springsteen website. If anyone sufficiently sophisticated in the use of the internet were to do that, they would very soon realise that the site they reached was not the official site, and consequently would move on, probably to conduct a fuller search').

837. See for example, Ueli Buri, Doctoral Dissertation in Law, Bern, *Die Verwechselbarkeit von Internet Domain Names nach schweizerischem Firmen-, Marken-, Namens- und Lauterkeitsrecht* (2000).

838. WIPO, *WIPO II Report*, v (Executive Summary).

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attribute to it that aim and where likelihood of being misled actually does exist.

Governments' interests in geographic names are not primarily commercial, though they may include certain commercial aspects as a result of the increased attention to country branding. Ultimately, the multiple purposes of unfair competition law lend support for the view that the protection of governments' interests in geographic names should not automatically prevail over all other interests. Further, where government interests are protected through unfair competition law, this must be strictly limited to commercial uses of geographic names that fall within accepted understandings of what is 'unfair'.

### 8.1.3 ACTS OF UNFAIR COMPETITION

It is next relevant to consider whether the act of registering a geographic domain name falls within the definition of an 'act of unfair competition' provided by the Paris Convention. Article 10*bis* (2) sets up a two-part test to determine whether an act of unfair competition has occurred, seeking first to determine whether there is an 'act of competition' and then if so, whether that act is generally 'contrary to honest practices'.

#### 8.1.3.1 Geographic TLDs: An 'Act of Competition'?

Unfair competition law seeks to control the unfair behaviour of commercial competitors for the benefit of the various parties identified in the preceding section of this chapter. As a starting point, there must be competition, because '[w]herever there is competition, there is unfair competition.'<sup>839</sup> The 'act of competition' sought to be prevented by Article 10*bis* (2) is conduct of a commercial nature which is likely to affect the players within a market. Most often such conduct is directed at a competitor, though it has been shown above that the harm occasioned by unfair conduct may have a wider impact. The question thus arises: are there competitors and competition of the sort envisioned by Article 10*bis* (2) at the top-level of the DNS?

It is certainly the case that applicants for domain names at all levels of the system compete against other applicants for the ability to identify themselves by a particular name in the DNS. Since the system's earliest days, it has been possible at the second and lower levels for competing applications for a single name to be made. This led to the early adoption of a 'first come, first served' registration policy.<sup>840</sup> Competing applications at the top-level of the DNS have likewise been made, though the instances of such conflicts are far fewer than at lower levels of the system due to the tightly controlled path

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839. Callmann & Altman, §1:1.

840. See n. 301 above.

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of development at the top-level.<sup>841</sup> Open and uncapped top-level expansion rounds are certain to generate an increase in the number of conflicting top-level domain applications. This is borne out by the applications received by ICANN in the New gTLD Program: of the 1,930 new gTLD applications filed during the application period of January to May, 2012, ICANN's analysis identified 751, nearly 40%, in direct contention.<sup>842</sup>

Even so, competition in the context of gTLD applications is not quite competition for market share in the traditional sense. Domain name applicants are competitors in that they vie for control of a unique resource. Allocation of the unique resource has the effect of granting the right of entry into the market, similar to the effect of the granting of a business license or permit in a regulated market. To the extent that an applicant engages in unfair acts in the course of preparing or submitting its application for a new gTLD string, this could have the effect of harming other applicants, web users, and even the functionality and perceived legitimacy of the system as a whole.

It is less easy to characterize the situation as competitive once new gTLDs are created, however, because it is not quite clear that the registries of delegated new gTLD strings are actually in competition with other TLD registries. On the one hand, it could be said that the availability of far greater numbers of top-level domains in which to register domain names will increase competition among top-level domain registries. This was precisely the aim of the two 'proof of concept' top-level expansion rounds, but it has yet to fully bear out in practice.<sup>843</sup> On the other hand it must be questioned whether new gTLDs do in fact compete with each other, particularly in the case of 'sponsored' or 'community based' gTLDs that are targeted at or are even restricted to a defined segment of the internet community. Will a new .paris top-level domain compete, for example, with a new .eco top-level domain – or even any of the existing top-level domains save the universal generic .com, .net and .org – for domain name registrants?

Article 10*bis* of Paris Convention notably requires action only when there are competitors, and it is not clear that competitors exist in this context. Member States have the freedom to 'grant protection against certain acts even if the parties involved are not competing against each other',<sup>844</sup> but this is not required under the Paris Convention or other international law.

### **8.1.3.2 Geographic TLDs: 'Contrary to Honest Practices'?**

The most fundamental question in the application of unfair competition law to geographic domain names is whether the simple act of registering a

841. Top-level DNS development is discussed in Part I, Chapter 2, section 2.4 above.

842. ICANN, *Program Statistics*, <http://newgtlds.icann.org/en/program-status/statistics> (accessed 15 Oct. 2012).

843. See n. 188 above.

844. WIPO, *Protection against unfair competition*, 18.

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geographic domain name or applying for a TLD string is inherently 'contrary to honest practices' when that act is carried out by anyone other than the relevant government or public authority (in the case of a geographic name) or the geographical indication holder (in the case of a geographical indication). Governments in particular have been quick to assume that the only legitimate interests in geographic domain names are their own. This point has been made not only in international law fora but in domestic courts and UDRP disputes. A group of such cases involve a United States-based company called Virtual Countries, which registered during 1999 and 2000 various country names as second-level domain names and operated thirty-one websites under those names.<sup>845</sup> The complaint made by the government of New Zealand against Virtual Countries' registration of [www.newzealand.com](http://www.newzealand.com) is illustrative of governments' general sentiment in this situation: 'Virtual Countries has no rights or legitimate interests in respect of the domain name [[newzealand.com](http://newzealand.com)] because only the Complainant as Head of the Sovereign State of New Zealand, or its agencies, can have those rights or interests.'<sup>846</sup>

If the government is the only party with 'rights or legitimate interests' in geographic domain names, it must logically follow that the registration of geographic domain names without government authorization is inherently 'contrary to honest practices'. Yet as a universal rule this is problematic, because what are deemed honest practices in one country may not be so deemed in another. To the extent that 'honest practices' can be identified from international trade norms, then these should be considered,<sup>847</sup> but agreed standards of honesty in commercial behaviour have proven elusive even at a regional level.<sup>848</sup>

It is difficult to prove the existence of agreed standards of honesty at a global level given their wide use in a variety of contexts. The use of geographic names in non-commercial contexts in the offline environment is ordinarily not subject to a requirement of government approval. There are, of course, bound to be variations in domestic approaches, but teachers, schoolchildren, journalists, researchers and politicians in free speech-promoting societies usually need not seek government clearance before speaking or writing geographic names. Further, as the recent survey conducted by the WIPO Special Committee on the Law of Trademarks, Industrial Designs and Geographical Indications evidences, many countries

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845. See for example, *Virtual Countries, Inc. v. Republic of South Africa and South African Tourism Board*, No. 00 Civ. 84888 U.S. Dist. LEXIS (S.D.N.Y. 2001); *New Zealand v. Virtual Countries*, WIPO Case No. D2002-0754; *Puerto Rico Tourism Company v. Virtual Countries*, WIPO Case No. D2002-1129. See also discussion in Rimmer, *Virtual Countries*, 126.

846. *New Zealand v. Virtual Countries*, WIPO Case No. D2002-0754.

847. See Bodenhausen, 144.

848. See Henning-Bodewig, 20.

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have taken steps to limit proprietary rights in geographic names as trademarks.<sup>849</sup> This has the practical effect of ensuring that geographic names remain accessible for public commercial use.

In the online environment, responses to third party use of geographic names are inconsistent. In some cases governments have been unable to convince UDRP panelists that unauthorized geographic domain name registrants have no legitimate interest in the names in question. The earlier-mentioned dispute between the government of New Zealand and Virtual Countries over the domain name [www.newzealand.com](http://www.newzealand.com) is a notable example. The panel in that dispute considered it unnecessary to specifically address the question of Virtual Countries' legitimate interest in the domain name, but it was nevertheless pointed out that the use of the name on an operative, 'genuine' website 'although sketchy and badly in need of being updated' weighed in the registrant's favour.<sup>850</sup>

Further insight is provided by a subsequent dispute involving the domain name [www.andalucia.com](http://www.andalucia.com), in which the panel relied upon consensus views that had by that point emerged from UDRP decisions. In response to the question, 'Does a respondent automatically have a legitimate interest in a domain name comprised of a generic (dictionary) word(s)?'<sup>851</sup> the panel found:

While the general rule is not necessarily, there is an exception, that is stated thusly: 'However: If a respondent is using a generic word to describe his product/business or to profit from the generic value of the word without intending to take advantage of complainant's rights in that word, then it has a legitimate interest.'

...

The Panel finds that where, as here, a respondent is using a geographic indication to describe his product/business or to profit from the geographic sense of the word without intending to take advantage of complainant's rights in that word, then the respondent has a legitimate interest in respect of the domain name.<sup>852</sup>

849. This survey is discussed in detail in Part III, Chapter 6, section 6.2.1.2 above.

850. *New Zealand v. Virtual Countries*, WIPO Case No. D2002-0754.

851. WIPO, *WIPO Overview of WIPO Panel Views on Selected UDRP Questions: 2.2 Does a respondent automatically have a legitimate interest in a domain name comprised of a generic word(s)?*, <http://www.wipo.int/amc/en/domains/search/overview/index.html#15> (accessed 15 Oct. 2012).

852. *Junta de Andalucía Consejería de Turismo, Comercio y Deporte, Turismo Andaluz, S.A. v. Andalucía.com Limited*, Case No. D2006-0749 (WIPO Arbitration and Mediation Center 13 Oct. 2006) (available at <http://www.wipo.int/amc/en/domains/decisions/html/2006/d2006-0749.html>). See also *Asphalt Research Technology, Inc. v. National Press & Publishing, Inc.*, Case No. D2000-1005 (WIPO Arbitration and Mediation Center 13 Nov. 2000) (available at <http://www.wipo.int/amc/en/domains/decisions/html/2000/d2000-1005.html>); *Porto Chico Stores, Inc. v. Otavio Zambon*, Case No. D2000-1270 (WIPO Arbitration and Mediation Center 15 Nov. 2000) (available at <http://www.wipo.int/amc/en/domains/decisions/html/2000/d2000-1270.html>).

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Similar questions have arisen in respect of domain names comprised of geographical indications. The registrant of the domain name [www.parmaham.com](http://www.parmaham.com), for example, was not found to have a legitimate interest in the name 'parma ham',<sup>853</sup> but the result may have been different had the domain name at issue resolved to an active website. Taking a slightly different approach, the sole panelist in that dispute found that possession of the domain name by the respondent, who was not otherwise affiliated with the holder of the geographical indication, nevertheless did not constitute bad faith. It was noted that this finding would not necessarily preclude a finding of unfair competition under domestic law. An issue is potentially also raised in relation to Article 22 of the TRIPS Agreement, but only, as concluded in the previous chapter, if the website was related to goods (in the immediate example, Prosciutto di Parma).

As to whether the global online public perceives the registration of a geographic domain name by a registrant other than the relevant government as 'contrary to honest practices', this would be difficult to determine in a global marketplace. Despite concerns about globalization and a resultant homogenization of consumer tastes and preferences, there remain significant cultural and other differences that prevent the formulation of a single perception or interpretation of most names. It has already been argued in the previous chapter that this divergence of consumer interpretation remains one of the greatest challenges to recognizing rights in geographical indications at the international level. The same problem hinders their protection under unfair competition law at the international level: terms which are in some countries protected as identifying a particular product originating from a particular geographical location are in other countries considered generic. As such, their use in the latter countries by someone other than producers of the product in the named location could not be considered dishonest.

Accordingly, if protection of geographic names is to be based on Article 10bis of the Paris Convention, this must result from a name-by-name, country-by-country determination of whether or not use of the name by a particular party without government authorization is 'honest practice'. This would be a resource-intensive undertaking, since not just the substance of the standard of honesty but even how it is determined that something is an 'honest practice' differs from country to country. Even *ex post* analysis of disputes involving similar names arising in multiple territories would present challenges, given the differing standards of 'unfairness' that may have been applied. Further, if it is the case that '[t]he most important factor for

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[www.wipo.int/amc/en/domains/decisions/html/2000/d2000-1270.html](http://www.wipo.int/amc/en/domains/decisions/html/2000/d2000-1270.html)); *Gorstew Limited v. Worldwidewebsales.com*, Case No. D2002-0744 (WIPO Arbitration and Mediation Center 23 Oct. 2002) (available at <http://www.wipo.int/amc/en/domains/decisions/html/2002/d2002-0744.html>).

853. *Consorzio del Prosciutto di Parma v. Domain Name Clearing Company, LLC*, Case No. D2000-0629 (WIPO Arbitration and Mediation Center 18 Sep. 2000) (available at <http://www.wipo.int/amc/en/domains/decisions/html/2000/d2000-0629.html>).

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determining “unfairness” in the marketplace ... is derived from the *purpose* of unfair competition law’,<sup>854</sup> there is little hope of arriving at any universal standard because the differing purposes of unfair competition law in various jurisdictions will lead to differing standards. In particular, what is considered fair in countries that carve consumer protection out from unfair competition law will differ from those countries that do not.<sup>855</sup>

It should thus not simply be assumed that the registration of a geographic domain name by a non-government registrant or the registration of a geographical indication domain name by a non-local producer falls squarely within the broadly worded definition of ‘unfair competition’ provided by Article 10*bis* (2) of the Paris Convention. Deeper consideration is needed to determine whether unauthorized registrations of geographic domain names fall within any of the specifically enumerated acts of unfair competition provided for under the Paris Convention. This will now be explored.

8.2                    SPECIFIC ACTS OF UNFAIR COMMERCIAL  
BEHAVIOUR

Paragraph (1) of Article 10*bis* of the Paris Convention is of a general nature, not obliging States to create new law ‘if their existing general legislation – for example, provisions of civil law directed against torts, or principles of common law – suffices to assure effective protection against unfair competition.’<sup>856</sup> Paragraphs (2) and (3) are less general in nature; while neither provides a comprehensive, authoritative list of impermissible acts of unfair competition, paragraph (2) offers the broad definition just discussed and paragraph (3) identifies three specific acts which, at a minimum, must be prohibited by members’ domestic law. These acts seek to prevent unfair competition, on the one hand by stopping an enterprise from disparaging its competitors, and on the other hand by attempting to narrow the knowledge and experience gap between enterprise and consumer. Of these three acts that the convention specifically identifies as unfairly competitive, it is said that they share one aspect in particular:

The *common aspect* of these most important, but by no means exhaustive, examples of unfair market behavior is the attempt (by an entrepreneur) to succeed in competition without relying on his own achievements in terms of quality and price of his products and services, but rather by taking undue advantage of the work of another or by influencing consumer demand with false or misleading statements.

854. WIPO, *Protection against unfair competition*, 24-25.

855. See Henning-Bodewig, 21.

856. Bodenhausen, 143.

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Practices that involve such methods are therefore doubtful at the outset as to their fairness in competition.<sup>857</sup>

It must be borne in mind that although Article 10*bis* (3) specifically identifies three behaviours as unfairly competitive, this list is not exhaustive; members are required to target all acts which would fall within the broad definition of unfair competition set out in Article 10*bis* (2), the relationship of which to geographic names generally and geographic domain names particularly has been discussed in the immediately preceding section of this chapter. Further, although geographic domain name registration is not expressly addressed by Article 10*bis* (3) and even to the extent that this provision is interpreted as not covering geographic domain name registration, there is nothing to prevent members from creating domestic law to that effect.

In addition to Article 10*bis*, which is specifically headed ‘Unfair competition’, Article 10 of the Paris Convention also addresses commercial behaviour that has the effect of harming competitors, consumers, or both. It makes actionable the use of false indications of source and thus is particularly relevant to the use of geographical indications. It is likewise applicable to other geographic names the use of which could be interpreted as connoting origin. The remainder of this chapter is devoted to an examination of these provisions in order to determine whether any of them offers grounds for restricting the registrability of geographic names as new gTLD strings.

#### 8.2.1 FALSE INDICATIONS OF SOURCE

The first attempt to control unfairly competitive acts at the international level took the form of preventions against false indications of source. At the 1880 conference that would result in the drafting of the Paris Convention, it was declared a priority that:

Tout produit portant illicitement soit la marque d’un fabricant ou d’un commerçant établi dans l’un des pays de l’Union, soit une indication de provenance dudit pays, sera prohibé à l’entrée dans tous les autres États contractants, exclu du transit et de l’entrepôt, et pourra être l’objet d’une saisie suivie, s’il y a lieu, d’une action en justice.<sup>858</sup>

The prohibition against false indications of origin took shape as Article 10, in which indications were actionable only to the extent that they were used in conjunction with a false, fictitious, or deceptive trade name.<sup>859</sup> Since revision at the 1958 Lisbon Conference, Article 10 applies to all direct or

857. WIPO, *Protection against unfair competition*, 24.

858. Ministère des Affaires Étrangères de la France, *Conférence Internationale pour la Protection de la Propriété Industrielle*, 14.

859. See Conrad, 23.

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indirect uses of a false indication of the source of goods. It is not expressly limited to geographical source, but that is identified as its most common application.<sup>860</sup>

Two things seriously hinder the applicability of Article 10 to geographic domain names. First, the indications of source covered by Article 10 are confined to those relating to goods, with the result that this provision is relevant only to second-level domain names corresponding to a website dealing in goods. Article 10 has no application to top-level domains because they bear no direct connection to goods. Rather, top-level domains represent the service of providing an online communications portal that others may, if they so choose, use to engage in commercial activity involving goods.

Second, even for those second-level domain names having a direct nexus to goods, or if a nexus between top-level domains and goods were thought to exist, Article 10 has no practical effect because the remedy for its breach is seizure of the falsely identified goods upon importation. This would have no effect on a domain name at any level of the DNS. Article 10 targets the cross-border movement of falsely identified goods; geographic domain names do not fall within this ambit.

Similar limitations arise in the application of Article IX:6 of the GATT Agreement, which deals with 'marks of origin'. It provides:

The contracting parties shall co-operate with each other with a view to preventing the use of trade names in such a manner as to misrepresent the true origin of a product, to the detriment of such distinctive regional or geographical names of products of the territory of a contracting party as are protected by its legislation. Each contracting party shall accord full and sympathetic consideration to such requests or representations as may be made by any other contracting party regarding the application of the undertaking set forth in the preceding sentence to names of products which have been communicated to it by the other contracting party.

As an initial matter, the obligations imposed by this provision are significantly weaker than those imposed by Article 10 of the Paris Convention, requiring only 'co-operation with a view to' preventing false representations of origin. As with Article 10, the application of GATT Article IX:6 is not applicable to services. This likewise renders it only partially applicable to second-level domain names and entirely inapplicable to top-level domain strings. In addition, the capability of this provision to protect geographic names is hindered by its having been given a very narrow interpretation in the case of *Japan – Customs Duties, Taxes and Labelling Practices on Imported Wines and Alcoholic Beverages*.<sup>861</sup> The Panel in that case found

860. See Bodenhausen, 139.

861. *Japan – Customs Duties, Taxes and Labelling Practices on Imported Wines and Alcoholic Beverages*, L6216 adopted 10 Nov. 1987, BISD 34S/83 (GATT Panel Report).

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that the use of terms such as ‘Riesling’ or ‘chateau’ by Japanese manufacturers was not detrimental to the names of products produced by the European Communities.

Like the Paris Convention, the GATT Agreement does not expressly prevent members from offering greater protection to origin statements under domestic law than is required by their treaty obligations. On the contrary, GATT Article XX(d) allows contracting parties to adopt or enforce measures ‘necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement, including those relating to [ . . . ] the protection of patents, trade marks, copyrights and the prevention of deceptive practices’. The term ‘deceptive practices’ has notably been interpreted to include ‘false marking of geographical origin.’<sup>862</sup> There is, however, no scope for protection of non-commercial names under the GATT.

Neither Article 10 of the Paris Convention or Article IX:6 of the GATT specifically offers rights that enable one party to prevent another’s registration and use of a geographic top-level domain string. Some scope exists under these provisions for restricting registration of second and lower level domain names, but this is limited to the use of specifically origin-connoting geographic names used to identify websites offering goods. Member States are not prevented from enacting specific legislation preventing unauthorized registration of domain names as a false statement of origin, but any such rights would be enforceable only in the jurisdiction in which they are granted.

### 8.2.2 ACTS CREATING CONFUSION WITH A COMPETITOR

Turning now to the first of the three acts that are specifically identified as unfairly competitive by the Paris Convention, Article 10*bis* (3)(i) prohibits ‘all acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities, of a competitor’. The term ‘all acts’ is sufficiently broad to be interpreted as including the registration and use of a name at any level of the DNS. The following two elements must additionally be satisfied for Article 10*bis* (3)(i) to justify a general rule of preventing their delegation to applicants without government authorization:

- The acts of applying for and operating a geographic gTLD, irrespective of the registrant’s intent,<sup>863</sup> are likely to create confusion with the government.

<sup>862</sup> Gervais, 7, citing *WTO Guide to GATT Law and Practice* 583 (6th ed., 1995).

<sup>863</sup> See WIPO (ed.), *Introduction to Intellectual Property*, 254 (nothing that while irrelevant to the determination of whether an act of unfair competition has taken place, intent may be deemed relevant to the determination of sanctions.)

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- Unauthorized geographic gTLD applicants and relevant governments are competitors.

These steps are analysed in the sub-sections that follow.

### **8.2.2.1 Likelihood of Creating Confusion**

It has been argued that society has become conditioned to ‘assume that all the iconic indicia of consumer culture must be owned, and thus that *any* appearance of them must be approved by their official owners.’<sup>864</sup> If this is so, confusion is likely to result from the use of geographic names in the DNS, fuelled by the authoritative or official status of their presumptive owners. There are various means of determining confusion in domestic law, but most commonly it is established using a ‘likelihood of confusion’ test derived from trademark law.<sup>865</sup> This test has played a major role in trademark owners’ efforts to extend their offline rights into the online environment. The standard applied is ordinarily that of ‘an average (reasonable) consumer, having normal attentiveness with regard to the nature of the product or service or the place where it is offered’.<sup>866</sup> In the context of this study the following question arises: would the average, reasonable, normally attentive internet user be likely to be confused by geographic domain names registered by or delegated to parties other than governments? The following two fabricated examples are illustrative of this issue:

- When the average internet user in Country A sees the top-level domain .uruguay, do they understand it to be delegated to or affiliated with the country of Uruguay?
- When the average internet user in Country A sees the domain name ‘mombasa.visit’, do they understand this second-level domain in the .visit top-level domain to be registered by or affiliated with the city of Mombasa?

The answers to these questions depend on a range of factors, of which several can be borrowed from trademark law:<sup>867</sup>

- The similarity between the geographic name and geographic domain name/string.
- The reputation or degree of distinctiveness of the geographic name/string and the location it names.
- The reputation of the government/s relevant to the name/string.

864. Coombe, 65 (internal citations omitted).

865. See AIPPI, *Effective protection against unfair competition under Article 10bis Paris Convention of 1883*, AIPPI Y.B. 1994/II, 398, 6.3. (1994)

866. *Ibid.*, 6.5.

867. See WIPO (ed.), *Introduction to Intellectual Property*, 255.

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- Internet user sophistication regarding the DNS (e.g., some users will know that not all country code TLDs are operated by or formally affiliated with the government of the territory represented).<sup>868</sup>
- The relationship of the reasonable internet user to the name (local familiar names may be interpreted differently than non-local unfamiliar names).
- The existence of other, non-geographic meanings of the name (the names ‘Turkey’ and ‘Orange’, for example).
- The existence of multiple geographic locations having the same name (Oxford, Ohio, USA and Oxford, England, for example).
- The relationship, if any, between a second-level domain name and the top-level domain in which it is registered (e.g., tokyo.japan may be assumed by the reasonable person to be associated with the government while cooking.japan may be understood differently).

Reliance upon the ‘reasonable person’ standard in the global context presents significant challenges because of the widely varied experience and knowledge of internet users across the globe. The reasonable internet user in one jurisdiction may be affected by the factors noted above in a different way than the reasonable internet user in another jurisdiction. Identifying a global standard would require capturing the many domestic standards and finding among them sufficient consistencies, to the extent that any exist. There is thus scant support for a general rule that any registration of a geographic domain name by a non-government registrant is likely to confuse.

There is greater scope for consistency in findings of likelihood of confusion when the domain name or string in question is a distinctive geographical indication.<sup>869</sup> The identification of a global ‘reasonable person’ standard is influenced by the fact that the ordinary use of a geographical indication is as an identifier of source. Consistent use of wine and spirit geographical indications resulting from the higher level of protection afforded them under Article 23 of the TRIPS Agreement increases the capacity for likelihood of confusion. The international register as proposed by Article 23<sup>870</sup> could, if it were to be established, have the effect of strengthening the public’s awareness of the indications recorded by it. Certain geographical indications may also benefit from widespread recognition through a patchwork of bi- and multilateral agreements between the origin country and trade partners. The European Union in particular has

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868. Country-code TLD administration is discussed at Part I, Chapter 2, section 2.4.2 above. The example of Tuvalu’s .tv ccTLD, which has no territorial restrictions and operates as if it were an open gTLD, is provided in n. 812 above.

869. See WIPO (ed.), *Introduction to Intellectual Property*, 256-257.

870. The proposed international register is discussed in Part III, Chapter 7, section 7.3.1 above.

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made the recognition of geographical indications a key issue in recent agreements with its trade partners.<sup>871</sup>

In countries in which a geographical indication is interpreted as identifying a type of (rather than a particular) product, there is no connotation of origin and thus no likelihood of confusion. Courts tend to rely on the meaning of a term to the relevant public, as ascertained from such things as dictionary definitions, telephone directories, media sources and other publications, along with the use of the term made by the party claiming ownership, its competitors and others.<sup>872</sup> It would be interesting to consider whether the convention of using lower-case letters in domain names has any effect on public perception, given that geographical indications are often identified in written expression with capital letters following the convention of proper (i.e., non-generic) names.

These issues lead to the conclusion that name-by-name, jurisdiction-by-jurisdiction analysis is needed to determine whether registration as a domain name or delegation as a gTLD of geographical indications or other geographic names falls within the scope of Article 10*bis* (3)(i). It is overreaching for States to prevent registration of geographic domain names on the basis of the existence of a general rule among all Paris Union members that this activity is inherently likely to confuse.

#### **8.2.2.2 Confusion with a Competitor**

In cases in which likelihood of confusion is found, unauthorized registration/delegation of a geographic domain name will not fall within the scope of Article 10*bis* (3)(i) if the registrant/registry operator and government or geographical indication holder are not competitors. To clarify, the likelihood of confusion must exist between two parties in a market, with advantages accruing to one competitor because consumers believe that competitor to be another competitor. General confusion about a market is not sufficient.

As noted earlier in this chapter, competition exists in the DNS but not in a clear, conventional sense. All new gTLD applicants compete against each other for monopoly control of a uniquely named domain. In the

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871. A summary of key EU bilateral agreements on geographical indications made in the ten years following the implementation of the TRIPS Agreement is provided in O'Connor and Company & Insight Consulting, *Geographical indications and TRIPs: 10 Years Later ... A roadmap for EU GI holders to get protection in other WTO Members*, [http://trade.ec.europa.eu/doclib/docs/2007/june/tradoc\\_135088.pdf](http://trade.ec.europa.eu/doclib/docs/2007/june/tradoc_135088.pdf). Recently-signed agreements addressing geographical indication protection include the Trade Agreement between the European Union and Colombia and Peru (Annex XIII) and the EU-South Korea FTA (Chapter 10, sub-s. B). See Trade Agreement between the European Union and Colombia and Peru (26 Jun. 2012) (available at <http://trade.ec.europa.eu/doclib/press/index.cfm?id=691>); EU-South Korea Free Trade Agreement (6 Oct. 2010) (available at <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:L:2011:127:SOM:EN:HTML>).

872. See Xuan-Thao N. Nguyen, *Nationalizing Trademarks: A new international trademark jurisprudence?*, 39 Wake Forest L. Rev. 729, 744-745 (2004).

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application process, a non-State geographic gTLD applicant is in competition with a government applicant. Once the string is delegated to a successful applicant, the focus turns to operation of the TLD registry and the relevant question becomes whether the non-State geographic gTLD registry operator is in competition with the government of that geographic location. This depends upon the gTLD and its operator, in particular what the mission and purpose of the gTLD are and whether these are likely to cause confusion with the 'establishment, the goods, or the industrial or commercial activities' of the government.

Outright rejection of gTLD applications lacking government authorization is unsupportable under Article 10*bis* (3)(i) because this fails to take into account the mission and purpose of the proposed domain and whether this gives rise to a competitive relationship. Further, it is certainly the case that not all geographic gTLD operators will be in competition with relevant governments. Domain names comprising a proprietary name and the derogatory word 'sucks' (so-called 'sucks sites') provide clear examples of potentially non-competing, non-commercial domains. This issue had not yet presented at the top-level of the DNS prior to the New gTLD Program, but two applications were made in the program for the top-level string '.sucks'.<sup>873</sup> Even if these applications are not successful,<sup>874</sup> they serve as an example of what is often non-commercial speech that cannot be considered confusion with a competitor.

The absence of a likelihood of confusion in all cases and the potential for confusion outside of a competitive relationship support a conclusion that Article 10*bis* (3)(i) does not oblige Paris Union Member States to prevent the unauthorized registration of geographical indications and other geographic names as domain names. Neither does Article 10*bis* (3)(i) prevent States from adopting and enforcing such a universal rule through domestic law.

### 8.2.3 FALSE ALLEGATIONS DISCREDITING A COMPETITOR

As the second specifically identified act of prohibited unfair competition, Article 10*bis* (3)(ii) of the Paris Convention targets 'false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor'. It is essentially a provision that protects a commercial enterprise from harm to its commercial

873. See ICANN, *Reveal Day 13 June 2012: New gTLD Applied-For Strings*, <http://newgtlds.icann.org/en/program-status/application-results> (13 Jun. 2012, accessed 15 Oct. 2012).

874. Kevin Murphy, *Governments probe domain land-snatch: many.gTLDs.suck*, *The Register* (29 Jun. 2012) (available at [http://www.theregister.co.uk/2012/06/29/domain\\_land\\_grab\\_under\\_the\\_microscope/](http://www.theregister.co.uk/2012/06/29/domain_land_grab_under_the_microscope/)). Murphy comments that the 'companies that have applied for .sucks ... face an uphill battle selling their proposed benefits to the GAC and to ICANN's influential intellectual property lobby.'

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reputation. With that in mind, it may be of even greater use to online businesses than offline businesses, because online reputation is potentially more difficult to build and therefore more valuable to the enterprise.<sup>875</sup> Yet while this may be the case for businesses and their brand-oriented domain names, it should not automatically be assumed to be so for those interested in geographic domain names.

It is helpful to begin by distinguishing Article 10*bis* (3)(i) from Article 10*bis* (3)(ii): misleading the public into confusion involves communicating something (usually positive) about one's own identity or products, while making a false allegation involves communicating something negative about another market player. In order for Article 10*bis* (3)(ii) to be called upon to prevent the unauthorized registration of geographic domain names or application for a geographic gTLD, the act of registration/application must be interpreted as the making of a false allegation. Additionally, that false allegation must be of a discrediting nature. It is difficult to see how the simple act of registering a geographic domain or applying for a TLD string could satisfy either of these elements.

### 8.2.3.1 False Allegations

Making an application for a geographic gTLD such as .london or for a geographic second-level domain such as champagne.com cannot on its own be characterized as the making of a false allegation. That these actions should even be characterized as an 'allegation' is not at all obvious given the ordinary meaning of that term as 'a claim that someone has done something wrong, typically an unfounded one.'<sup>876</sup> There may be some scope for interpreting a geographic gTLD string as a claim the applicant makes about itself, but it is not logical to characterize a geographic gTLD as a claim about another party.

Even if domain names generally or geographic domain names specifically are understood in this manner, it is inappropriate to assume that the claim they make is false. Geographic names can be interpreted in a variety of ways, including most obviously as the identifier of a particular geographic location. Only false allegations are expressly prohibited by this provision, and it is indubitably not the case that all of the possible interpretations of a geographic name are inherently false. The same can be said of domain names more generally. Here it helps to return to the discussion of what a domain name is, first and foremost the identifier of a particular location in the DNS. It is true that domain names have taken on initially unintended semantic

875. See Dan Jerker B. Svantesson, *The right of reputation in the Internet era*, 23(3) Int'l Rev. L. Comp. & Tech. 169, 170 (2009) (positing that reputation has a much greater role to play online than off because 'online you simply do not have the same possibilities of building trust through means such as location, shop structure, etc.').

876. *The Concise Oxford English Dictionary* 34 (Catherine Soanes & Angus Stevenson eds., 11th ed. revised, Oxford University Press 2008).

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significance, but to consider the act of applying for a top-level domain name the making of a false allegation is to push that significance to illogical limits. It should, however, be acknowledged that Paris Union members remain free to prohibit through domestic law true but nevertheless disparaging statements.<sup>877</sup>

### 8.2.3.2 Discrediting a Competitor

Even if it is found that a geographic domain name or string constitutes a false allegation, that allegation must be ‘of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor’, what WIPO characterizes as an ‘attack’ on one’s competitor.<sup>878</sup> The ordinary meaning of the verb form of the word ‘discredit’ as ‘harm the good reputation of, cause (an idea or account) to seem false or unreliable’<sup>879</sup> serves to emphasize that the allegations at issue in Article 10*bis* (3)(ii), unlike the misleading activity targeted by Article 10*bis* (3)(i), are specifically directed at others in the market.

The act of filing an application for a geographic domain name cannot, on its own, be said to constitute an attack on others. Such a finding could only be reached by considering the context in the geographic domain name is used, for example in conjunction with pejorative words. It could be said that a top-level domain such as .australiasucks or the domain name ‘australia’ registered in a new .sucks TLD (‘australia.sucks’) discredits everything about Australia, including its ‘establishment’, ‘goods’, and ‘industrial or commercial activities’. Opinions are not actionable,<sup>880</sup> however, and it can be argued that registrants of such domain names are using the domain name system to express an opinion rather than an objective fact.

Furthermore, discrediting though it may be, the use of a name in a ‘sucks site’ may be non-commercial in nature and made by a party not constituting a ‘competitor’. Like Article 10*bis* (3)(i), Article 10*bis* (3)(ii) does not require that States prevent acts, however undesirable, against those who are not competitors. Accordingly, most countries limit disparagement to ‘cases where there is at least some sort of competitive relationship between the plaintiff and the defendant.’<sup>881</sup> Countries that do extend the scope of this provision are not required by Article 10*bis* (3)(ii) to do so, but neither are they prevented from doing so.

Restrictions on the registration of geographic domain names on the basis of their constituting a false allegation that discredits a competitor thus lack support from Article 10*bis* (3)(ii). Paris Union members are not obliged

877. See AIPPI, 7.1.

878. WIPO (ed.), *Introduction to Intellectual Property*, 266.

879. Soanes & Stevenson (eds.), *The Concise Oxford English Dictionary*, 409-410.

880. See Lisa P. Ramsey, *Free Speech and International Obligations to Protect Trademarks*, 35 *Yale J. Int'l L.* 405, 421 (2010).

881. WIPO (ed.), *Introduction to Intellectual Property*, 266.

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to prevent the registration of geographic names as domain names or strings, and it is difficult to see how Member States can rely on Article 10*bis* (3)(ii) as a basis for domestic law to that effect. A State's claim to rights on this basis appears less motivated by a desire to prevent unfair competition than a desire to foreclose all competition in order to prevent any slights against or encroachments upon the State's reputation. If that is the true intention, a more appropriate source of rights to consider is the trademark theory of dilution, the potential application of which to geographic names is discussed in the final section of this chapter.

8.2.4                    INDICATIONS OR ALLEGATIONS LIABLE TO MISLEAD THE PUBLIC

Article 10*bis* (3)(iii) of the Paris Convention sets out the last of the three specifically prohibited acts of unfair competition, 'indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods.' The Austrian proposal from which this provision originated included the word 'origin', but its removal was motivated by objections raised by the United States.<sup>882</sup> Origin statements or indications going to 'the *identity of the producer*, his *establishment* or his *industrial or commercial activities*' (emphasis in original) were thus beyond the reach of Article 10*bis*, and to the extent not covered by Article 10, relegated to domestic law.<sup>883</sup> The International Association for the Protection of Intellectual Property (AIPPI) has observed, however, that 'in general, all kinds of allegations, not restricted to those listed in Article 10*bis*, are covered by such protection, including allegations referring to the geographical origin of the products'.<sup>884</sup> Furthermore, despite the inapplicability on its face to geographical indications, this provision nevertheless 'became a launching point for'<sup>885</sup> the drafting of Articles 22, 23 and 24 of the TRIPS Agreement respecting geographical indications. The end result is a curious one, in that section 22(2) of the TRIPS Agreement effectively extends the scope of protection under Article 10*bis* of the Paris Convention by bringing geographical indications, which are by definition origin statements, within its scope.<sup>886</sup>

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882. See J. Thomas McCarthy & Veronica Colby Devitt, *Protection of Geographical Denominations: Domestic and International*, 69 Trademark Rep. 199, 201-203 (1979).

883. See Bodenhausen, 146 (internal citations omitted).

884. AIPPI, 8.1.

885. Hughes, *Spirited Debate*, 312.

886. See Conrad, 35-36.

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#### **8.2.4.1 Misleading**

As with standards of truthfulness and fairness, the question of whether an indication or allegation is misleading inevitably varies from jurisdiction to jurisdiction.<sup>887</sup> Some countries tolerate exaggeration up to a point, but there is no universal agreement as to where that point lies.<sup>888</sup> This makes it difficult to enumerate specifically misleading acts at the international level. It is generally the case that in order to fall within the scope of Article 10*bis* (3)(iii), the indication or allegation in question need not be inherently false or actually result in a false impression in the consumer's mind. Rather, its misleading character is determined by the consumer's reaction, which 'may differ from country to country and may also depend on the kind of addressee (consumers or traders) and the type of goods or services. The Paris Convention leaves this question to member States'.<sup>889</sup>

The question in the context of geographic names' use in the DNS is whether their delegation to (top-level) or registration by (second or lower level) an applicant other than a government or geographical indication holder is inherently misleading to the average, reasonable internet user. As discussed in the context of the prohibition through Article 10*bis* (3)(i) of 'all acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities, of a competitor', global reasonableness standards are difficult if not impossible to identify. It is extremely difficult to gauge public perception on a global scale, and attempts to do are very likely to reveal that the savvy and experience attributed to the average internet user differs from country to country and perhaps even within a country.

#### **8.2.4.2 Limited to Goods**

Even if geographic top-level domains are considered inherently misleading, there is an insurmountable obstacle to the application of Article 10*bis* (3)(iii), which is the limitation of that provision to 'indications or allegations' made about goods. As has been argued in the context of geographical indications in the previous chapter, unlike second-level domains (which may, although need not, have a direct connection to goods), top-level domains and their operators have no such connection. Rather, they provide a service by making available a communications portal. A .champagne gTLD, for example, could be a space in the DNS for domain name registrants to communicate commercial and non-commercial information about Champagne the region, Champagne the product originating from that region, or other things.

While Article 10*bis* (3)(iii) may offer protection against the registration of geographic second- and lower level domain names to the extent that these

887. See AIPPI, 8.2.

888. See WIPO (ed.), *Introduction to Intellectual Property*, 261-262 and 264.

889. *Ibid.*, 262.

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are a) used in connection with goods and b) deemed misleading under domestic law as regards those goods, no such protection is afforded in the context of top-level domain strings. For the same reasons for which it was concluded the previous chapter that there are no preventable uses of geographical indications at the top-level of the DNS, it can be concluded that Article 10*bis* (3)(iii) does not oblige Paris Union Member States to prevent geographic gTLD applications by non-State applicants. It is open to members to deem the registration of a geographic domain name at any level of the DNS by a party other than the relevant government or geographical indication holder inherently misleading, but this is not required by the Paris Convention. Nor is there any evident consistency amongst States adopting this broader approach.

### 8.3 PROTECTION OF REPUTATION

Although it seems logical to link a desire to prevent reputational harm with unfair commercial behaviour, the preceding analysis of Paris Convention Articles 10 and 10*bis* illustrates the very limited protection available to reputation through international unfair competition law. The concerns of governments and geographical indication holders about misappropriation of identity by others' use of geographic names are not limited to actions of competitors, nor does the term 'competitor' have much traction in this context. Even to the very limited extent that Articles 10 and 10*bis* protect these interests, they are clearly not sufficient bases for broader claims to exclusive rights in geographic names. Two further, related doctrines of rights protection will now be considered to determine their potential for filling the gaps left by unfair competition law: dilution and personality rights.

#### 8.3.1 DILUTION

Dilution sits uneasily alongside unfair competition principles because its prevention of the use of a trademark in connection with even unrelated goods or services effectively makes competition in that sector impossible. Put simply: 'How could there be unfair competition when there was no competition?'<sup>890</sup> Dilution is therefore logically addressed in the Paris Convention not in Article 10*bis*, but rather separately in Article 6*bis*, which applies only to 'well-known' trademarks.

The function of the doctrine of dilution is to prevent the erosion by anyone – direct competitors or otherwise – of the reputation of famous

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<sup>890</sup>. Brown Jr, 1192.

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trademarks.<sup>891</sup> The broader range of preventable acts fills in some of the gaps identified in the previous section of this chapter in terms of the applicability of unfair competition law to geographic names' use in the DNS. It has already been suggested that dilution may be usefully applied at the second-level of the DNS 'if a customer became confused about the owner of the domain name, purchased goods from a cybersquatter thinking they were made by the brand and lost confidence in the brand, thereby harming its reputation and value.'<sup>892</sup>

There is precedent for protecting geographic names under Article *6bis* even where they are not registered as trademarks: Article *6bis* has successfully been relied upon to support a claim to rights in the name of the government of the Spanish region of Catalunya, 'Generalitat de Catalunya'. In a UDRP dispute brought by the local government, the name in question was found to be protected on the basis of its well-known status and Spanish law's recognition of unregistered well-known marks.<sup>893</sup> The key in this and similar cases is domestic law's recognition of a geographic name as a trademark, which has the automatic effect of bringing the name within the scope of the UDRP. If domestic law does not consider the name a trademark, then the UDRP is inapplicable and the party asserting rights in the name can rely only on whatever other rights might be available under domestic law.

Setting aside the possibility of bringing a UDRP claim, the domestic applicability of dilution theory may extend beyond trademarks. This has significant potential for the protection of geographic names as a possible future development in international law. The protection of geographical indications in some European jurisdictions, for example, has been compared to the protection against dilution afforded to famous trademarks in the United States,<sup>894</sup> which is where trademark dilution theory originated. Not coincidentally, then, have the European Commission's proposals for increased protection of geographical indications under the TRIPS Agreement been said to resemble a dilution or 'dilution plus' type of protection.<sup>895</sup>

In its 1996 Model Provisions on Protection against Unfair Competition, the World Intellectual Property Organization proposed amending Article *10bis* (3) to include acts that damage goodwill or reputation.<sup>896</sup> Such an amendment would increase support for the protection of geographic names, in particular by eliminating the need for a competitive relationship between

891. See Callmann & Altman, 22:15. On well-known marks and their potential reservation from domain name registrability, see Part II, Chapter 3, section 3.2.1.3 above.

892. Elizabeth C. Woodard, *The UDRP, ADR, and Arbitration: Using proven solutions to address perceived problems with the UDRP*, 19 Fordham Intell. Prop. Media & Ent. L. J. 1169, 1176 n. 31 (2009).

893. *Catalunya v. Wolf*, WIPO Case No. D2002-1124.

894. See Hughes, *Spirited Debate*, 347-349.

895. *Ibid.*, 319.

896. See WIPO, *Model Provisions on Protection Against Unfair Competition*, WIPO Pub. No. 832 (1996).

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the parties, with the operative situation being ‘any act or practice in the course of industrial or commercial activities’.<sup>897</sup> Interpreted broadly, as instructed by the accompanying Notes, this would include ‘activities of professionals and non-profit making activities.’<sup>898</sup>

In summary, the proposed amendment to Article 10*bis* (3) has as-yet not been agreed upon and the ‘model’ provisions, which are directed at countries that are as an initial matter introducing unfair competition laws into national legislation in order to comply with their obligations under the TRIPS Agreement, are not binding. Nevertheless, these things are indicative of a desire at the international level to broaden the protection offered by dilution and to bring geographic names within the scope of unfair competition law.<sup>899</sup> Currently, the protection against dilution offered by Article 6*bis* of the Paris Convention is available only to geographic names recognized under domestic trademark law. Nor is Article 10*bis* (3), in its present wording, able to prevent damage to reputation except by competitors and in the very limited constellations identified in its sub-sections (i), (ii) and (iii).

### 8.3.2 GEOGRAPHIC NAMES AND PERSONALITY RIGHTS

There are strong conceptual links between unfair competition and the protection of personality or identity. Like individuals, governments are concerned about identity theft in the online environment. The recognition of personality rights in geographic names could address States’ concerns by preventing unauthorized parties from holding themselves out as the government or its authorized representative on the internet. This sort of protection ordinarily has as its focus the reputation of persons; it must therefore be questioned whether international law recognizes personality rights of States such that these rights might be called upon by governments to prevent unauthorized applications for geographic gTLDs.

WIPO has considered this question in the context of protecting personal names from unauthorized registration as second-level domain names, and concluded that the domestic nature of personality protection and the diversity of domestic approaches are obstacles to the existence of an international norm of protection of personal names.<sup>900</sup> In jurisdictions where protection exists for personal names, this generally takes the form of personality law, which derives from individuality and personhood.<sup>901</sup> Such a theory could recognize that a State’s identification with a symbolic name gives rise to a ‘personality stake’<sup>902</sup> in that name; the use of that name by another could

897. *Ibid.*, 62 Art. 1(1).

898. Henning-Bodewig, 24.

899. See Gervais, 298-299.

900. See WIPO, *WIPO II Report*, para. 178.

901. See Melville B. Nimmer, *The Right of Publicity*, 19 Law & Contemp. Probs. 203 (1954).

902. Hughes, *The Philosophy of Intellectual Property*, 340-341.

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plausibly be interpreted as analogous to appropriation of an individual's interest in his or her personality.<sup>903</sup> Yet the characteristics of individuality and personhood underpinning protection are unique to human beings and lacking in other forms of legal person. On this basis, personality theory has been deemed to be of limited application to protecting corporations' trademarks.<sup>904</sup> The same logic refutes governments' claims to geographic names on the basis of personality.

Even where human personality rights are recognized in domestic law,<sup>905</sup> they cannot be characterized as rights in a name as such.<sup>906</sup> First, they are limited to protecting commercial value in a name,<sup>907</sup> and ordinarily this stands to benefit only famous persons. Even then, not all uses of the famous person's name can be prevented; in particular, non-commercial, informational uses are not preventable where the right to free speech is protected.<sup>908</sup> In the context of domain names, it is certainly not the case that any person can object to a registration of his or her name as a domain name on the basis of personality theory, and in any event the multiplicity of names will make it virtually impossible for every person with a common name to have his or her own domain name.

If a personality theory of statehood exists, to the extent that it is based upon existing personality doctrines respecting persons, the protection it offers is likewise limited. Though their relatively low numbers and global notoriety create commercial value in States' names, the benefit to States of a personality theory would be limited to preventing commercial uses of a country name. Most sub-national geographic names will have more difficulty in demonstrating requisite fame than country names. Non-commercial use of geographic names in diplomatic, official, descriptive or informative contexts – realistically a large proportion of the possible uses of geographic names – cannot be prevented. A complete prohibition on the unauthorized registration of geographic domain names on this basis would require as a conceptual first step deeming the act of registration, irrespective of the nature of the proposed use of the domain, an inherently commercial activity.<sup>909</sup>

The internet has undeniably given rise to concerns about misappropriated identity and corresponding harm to reputation. There is nevertheless no

903. See Leon Green, *The Right to Privacy*, 27 Ill. L. Rev. 237 (1932).

904. See Anupam Chander, *The New, New Property*, 81 Texas L. Rev. 715, 748 (2003), citing Margaret Jane Radin, *Reinterpreting Property* 12-13 and 112 (University of Chicago Press 1993).

905. See Madow, 132 n. 23 and n. 24.

906. See WIPO, *WIPO II Report*, para. 172.

907. See Madow, 130.

908. See WIPO, *WIPO II Report*, para. 196 (contemplating the 'chilling effect on free speech' if personal names were to be protected under the UDRP).

909. On the inherently commercial nature of internet transactions and the effect that such a determination would have on DNS law and policy, see Part III, Chapter 5, section 5.2.2 above.

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international legal framework currently in place to prevent the harm that could potentially result from the registration of a geographic domain name by a party not authorized to do so by a relevant government. There are conceptual obstacles to applying human personality rights to non-human interests, and even if this were not the case, human personality rights are not recognized as an international norm. A theory of State personality is not yet extant, and its future development would likely require significant departure from existing notions underpinning personality protection available to persons.

8.4 CONCLUSIONS ON COMMERCIAL RIGHTS IN  
GEOGRAPHIC NAMES

This chapter has challenged justifications of restrictions on geographic names in the DNS on the basis of international unfair competition law. Governments' claims to rights in geographic names on this basis appear to be grounded more in a desire to exercise control than to promote honesty in commercial dealing, promote and protect commercial investment, promote competition or protect consumers. One is ultimately inclined to agree with the comments made in a 1945 decision of the United States Second Circuit Court of Appeals that 'the doctrine of so-called "unfair competition" is really a doctrine of "unfair intrusion on a monopoly",'<sup>910</sup>

As a starting point, the notion of 'competitors' in the context of the top-level of the DNS is strained. It is prudent to question whether an applicant for a new geographic gTLD is a competitor, in the ordinary sense of that term, with existing TLD registries, other applicants for new gTLDs, or governments relevant to a geographic name. If not, unfair competition law as provided for in Article 10*bis* of the Paris Convention is inapplicable to geographic gTLDs. Yet even if this challenge is overcome, there remain other considerable obstacles to applying international unfair competition law at the top-level of the DNS.

Preventing the registration of geographic gTLDs cannot be justified on the basis of all registrations being a false indication of the source of goods or an indication or allegation liable to mislead the public about goods, because top-level domains and the registries that operate them lack the requisite connection to goods. The then-Director General of WIPO pursued the inclusion of services in Article 10*bis* (3) in 1977,<sup>911</sup> but the attempt was unsuccessful. This provision remains applicable only to goods and therefore cannot be applied to the top-level of the DNS.

910. *Standard Brands v. Smidler*, 151 F.2d 34, 40 (C.C.A. 2d 1945) (concurring opinion of Frank, J.).

911. See McCarthy & Devitt, 204. Services were included in the first TRIPS negotiation draft, but later removed. See Conrad, 34 n. 101.

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Whether a TLD string can on its own constitute an allegation discrediting a competitor is doubtful. Dilution theory, which is conceptually at odds with unfair competition law but relatedly targets commercial behaviour that causes harm, is recognized in international law, but at this stage applies only to trademarks. It remains to be seen whether this form of protection will ultimately be extended to geographical indications through the TRIPS Agreement or some other instrument. Nor is there a norm in international law recognizing personality rights in respect of states.

There is scope for protecting the rights of geographical indication holders (which unlike government interests do have a clearly and directly commercial application) by preventing their registration as top-level domain strings, but this protection depends in large part on the distinctiveness of the indication. Until awareness is achieved more broadly, whether through an international register or otherwise, few names will benefit from this protection. Like geographic names generally, geographical indications are subject to a name-by-name, jurisdiction-by-jurisdiction analysis as to their distinctiveness and likelihood of creating confusion.

These considerations lead to the conclusion that neither Article 10 nor Article 10*bis* of the Paris Convention obliges Paris Union members to prohibit as acts of unfair competition the unauthorized registration of geographic names or geographical indications as top-level domain strings. The same conclusion is reached with respect to Article 6*bis* of the Paris Convention and GATT Article IX:6. It is important to emphasize, however, that Article 10*bis* (3) is not exhaustive; the broader definition of 'unfair competition' provided in Article 10*bis* (2) makes this clear. While the three specifically enumerated acts of unfair competition 'are important examples of unfair competition and may even cover the majority of acts committed in practice... there exist manifold other ways and means to commit unfair competition which do not fall into any of these three categories.'<sup>912</sup> WIPO's Model Laws are evidence of a view that the unfair competition provisions of the Paris Convention require clarification and strengthening.

It is also important to emphasize that although the Paris Convention does not specifically oblige States to prevent the registration of geographic domain names as false indications of origin or as acts of unfair competition, it does not prevent members from enacting domestic law to that effect. Unfair competition law remains a domestic source of rights with the subject matter protected as well as the means of protection left open for States to decide. Greater protection for geographic names generally and geographical indications specifically, through unfair competition or anti-dilution law, may motivate the marketplace to provide better, more accurate information or perhaps even better quality products. In the context of the DNS, this may upset the delicate balance between laws protecting commercial signs, competition law and free speech. Although there was found in 1925 'no

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912. AIPPI, para. 1.

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substantial precedent to indicate the degree of control of an industry through trade symbols which would be held a restraint of trade or an attempt to monopolize any part of trade or commerce', the process of evaluating new gTLD applications and delegating new gTLDs could just bring about the sort of 'scheme of industrial dominion'<sup>913</sup> that was then speculated of.

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913. Brown Jr, 1202.

## Chapter 9

# Human Rights in Geographic Names

What are we? A nation? A region? In the Internet we are a community of interest.<sup>914</sup>

### 9.1 LINKING GEOGRAPHIC DOMAIN NAMES WITH HUMAN RIGHTS

#### 9.1.1 HUMAN RIGHTS, INTERNET ACCESS, AND IDENTITY

In the relatively short time since its being made accessible to the public, the internet has come to play an integral role in peoples' daily lives. This is so much the case that it can now be plausibly argued that obstacles impeding a person's ability to access and use the internet have the effect of impinging upon that person's ability to survive and thrive in the modern world. Much has been written about the potential benefits of technology to humankind and the continuation and development of cultures, languages and communities,<sup>915</sup> indeed, this has been a prime reason for expanding the top-level of the DNS since the privatization of the internet with the formation of ICANN, a corporate body specifically charged by the United States government with reflecting in its decision-making processes 'the functional, geographic and

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914. Gerrand, *Cultural diversity in cyberspace*, quoting Amadeu Abril i Abril.

915. See for example, Celia Lury, *Cultural rights: technology, legality, and personality* (Routledge 1993); Kyra Landzelius ed., *Native on the net* (Routledge 2006); *Intellectual Property and Traditional Cultural Expressions in a Digital Environment* (Christoph Beat Graber & Mira Burri-Nenova eds., Edward Elgar 2008).

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cultural diversity of the Internet'.<sup>916</sup> As ICANN proceeds with expansion of the top-level of the DNS, an argument can be made that rejecting an application for a new gTLD can have the practical effect of denying the applicant (and, to the extent that the application is made on behalf of a community, that community) from expressing itself online and having an online identity. Given the fundamental nature of the internet to contemporary humanity, it is therefore imperative that any restrictions placed by ICANN on the creation of new generic top-level domains is closely examined with the rights of the persons and communities affected by them in mind.

The implications of the technology underpinning the DNS, in particular the requirement of absolute name uniqueness, have been discussed in earlier chapters of this book in the context of internet governance issues, but there are also major societal implications embedded in the decision-making processes that will result in a greater number of gTLDs. Conceptual links can be drawn between the societal implications of these decisions and the fundamental attributes of humanity that are acknowledged and protected through human rights law. The aim of this final chapter is to explore those implications and the potential of human rights as a basis for challenging States' assumptions of exclusive rights in geographic names and control over their use in the DNS.

The relevance of human rights to new gTLD policy has been recognized within ICANN from the start of the policy development process: in its 2007 recommendations to the Board of Directors the Generic Names Supporting Organization (GNSO) expressly identified the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights as potential sources of existing legal rights, conflict with which it advised avoiding.<sup>917</sup> These instruments and others are considered in this chapter as possible sources of human rights in geographic names which may conflict with a policy that gives States exclusive control over their use in the DNS.

Some human rights lack a precise definition, making it difficult to determine whether particular actions fall within their scope. This can be seen as an advantage or a disadvantage to those who seek to challenge States' rights in geographic names. It is on the one hand an advantage that human rights treaties and customs are in a state of development; if a claim can plausibly be based on any of the universal aspects of humanity protected by human rights law, it may be more favourably received than a claim to rights based on capitalistic attitudes to property ownership.<sup>918</sup> It is nonetheless a disadvantage that no specific human right to possess, control or use a geographic name has been codified or crystallized in international law. Standing in the way of such a precisely articulated right coming into

916. ICANN, *Bylaws*, Article 1 section 2(4).

917. GNSO, *Final Report on the Introduction of New Generic Top-Level Domains*, Recommendation 3.

918. See Michael F. Brown, *Who Owns Native Culture?* 40 (Harvard University Press 2003).

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existence is a reluctance to interpret the term ‘human rights’ too liberally for fear of diluting the effectiveness of human rights law in redressing major wrongs.<sup>919</sup> Yet even without such specificity, certain internationally recognized human rights of a broader nature, such as the rights to national identity, self-determination, freedom of expression, culture, language and property, as well as the doctrine of common heritage of mankind, may potentially be called upon in support of a right of persons to use geographic names.

Precisely because of the lack of specificity in articulating the bounds of human rights, the intention here is not to catalogue all of the rights that could potentially be interpreted as encompassing a right to geographic names. Rather, the intention is to focus on key rights for which there is a compelling connection to geographic names and explore the strengths and weaknesses of those connections. Before commencing this analysis, it is important first to identify the core concepts of the international human rights law framework into which this discussion fits. This chapter thus begins with a discussion of the subjects and sources international human rights law, explaining their particular relevance to geographic names and their use in the DNS. This foundation is then built upon by examining five specific human rights: the right to self-determination, the right to national identity, the right to freedom of expression, the right to culture and the right to language. The substance of each of these rights is discussed in order to evaluate their potential for encompassing a right of persons or peoples make use of a geographic name in the DNS.

Recalling earlier chapters’ consideration of the links between geographic names and property rights, the third section of this chapter explores the potential for geographic names’ recognition as the property or non-property of mankind. It begins with a discussion of the recognition in international law of a right to property, then progresses to consideration of the intellectual property-based concept of the public domain. This chapter ends by turning to natural resources law to consider the applicability the concept of the common heritage of mankind. Conclusions on human rights relating to geographic names are then summarized.

9.1.2                    **DISTINGUISHING HUMAN RIGHTS AND INTELLECTUAL  
PROPERTY RIGHTS**

There ‘is little doubt’ as to the intention of human rights law as ‘endow[ing] individuals directly with basic rights’<sup>920</sup> under international law. These rights

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919. See Richard B. Bilder, *An Overview of International Human Rights Law*, in *Guide to International Human Rights Practice* 15 (Hurst Hannum ed., Transnational Publishers 2004).

920. Rene Provost, *International Human Rights and Humanitarian Law* 18 (Cambridge University Press 2002).

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'apply always and everywhere',<sup>921</sup> but an individual's being acknowledged as having the capacity to possess rights 'does not necessarily imply the capacity to exercise those rights oneself'.<sup>922</sup> Rather, human rights law imposes obligations on (in some cases, all) States to respect and promote human rights on the individual's behalf. In addition to the obligation upon them not to infringe human rights, States are obliged to protect these rights against interference by private parties.<sup>923</sup> Increasingly, international law recognizes not just individual but collective or community rights, as it comes to be acknowledged that modern State theory and the fundamental precepts of international law derived from it inadequately capture 'the multiple, overlapping spheres of community, authority, and interdependency that actually exist in the human experience.'<sup>924</sup> Identity (whether online or offline) is not purely individualistic: rights affecting identity must take into account individual and collective interests, and these must be balanced not just between individuals as against other individuals and communities, but between the individual and his or her own community.<sup>925</sup>

This tension is also inherent in intellectual property law, with its traditional aim of protecting the creative efforts and outputs of identifiable individual creators. The almost-complete ignorance in the TRIPS Agreement of community-generated creative works has provoked debate about the need for *sui generis* protection regimes based on or beyond the existing intellectual property law framework.<sup>926</sup> In the meanwhile, human rights law offers

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921. *Ibid.*, 19, quoting Report on Human Rights in Armed Conflict, U.N. Doc. A/8052 (1970) 13, para. 25.
922. *Peter Pázmány University v. Czechoslovakia*, P.C.I.J. Reports Ser. A/B No. 61, 231 (P.C.I.J. 1933).
923. If ICANN's New gTLD Program policy of recognizing exclusive rights of States to geographic names is deemed inconsistent with international law under any of the bases explored in this study, this gives rise to an interesting possibility that the United States has an obligation under human rights law to compel ICANN, an American corporation, to revise its policy of requiring government consent or non-objection to applications for geographic new gTLDs. This issue lies beyond the scope of this study but is identified here for later consideration. On the obligation to protect, see *generally*, Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary* 448 (2d ed. revised, N.P. Engel 2005).
924. S. James Anaya, *Indigenous Peoples in International Law* 101 (2d ed., Oxford University Press 2004).
925. As an example of a situation requiring balancing of the rights of individuals vis-à-vis their community, Anaya points (at 136) to the Human Rights Committee's decision in the case of *Kitok v. Sweden*, Communication No. 197/1985, *Report of the Human Rights Committee*, U.N. GOAR, 43rd Sess., Supp. No. 40, at 207, U.N. Doc. A/43/40, Annex 7(G) (1988) (views adopted 27 Jul. 1988).
926. See for example, Thomas Cottier & Marion Panizzon, *Legal Perspectives on Traditional Knowledge: The case for intellectual property protection*, 7 J. Int'l Econ. L. 371 (2004); Jeannette Mwangi, *TRIPS and Agricultural Biotechnology: Implications for the Right to Food in Africa*, in *Human Rights and Intellectual Property Rights: Tensions and Convergences* 241-288 (Mpazi Sinjela ed., Martinus Nijhoff 2007).

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an alternative means of protecting and preserving communities' culture, language and ways of life.<sup>927</sup>

Despite this apparent overlap, it must be borne in mind that the aims of intellectual property law and the rights it protects are not equivalent to the aims and protections afforded by human rights law. The United Nations' Committee on Economic, Social and Cultural Rights makes this clear in its General Comment No. 17,<sup>928</sup> which explains the rationale of Article 15(1)(c) of the International Covenant on Economic, Social and Cultural Rights (ICESCR). That provision sets out the 'right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author'. In distinguishing this right from the rights that accrue to authors and inventors under intellectual property laws, the Committee explained:<sup>929</sup>

The right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author is a human right, which derives from the inherent dignity and worth of all persons. This fact distinguishes Article 15, paragraph 1 (c), and other human rights from most legal entitlements recognized in intellectual property systems. Human rights are fundamental, inalienable and universal entitlements belonging to individuals and, under certain circumstances, groups of individuals and communities. Human rights are fundamental as they are inherent to the human person as such, whereas intellectual property rights are first and foremost means by which States seek to provide incentives for inventiveness and creativity, encourage the dissemination of creative and innovative productions, as well as the development of cultural identities, and preserve the integrity of scientific, literary and artistic productions for the benefit of society as a whole.

Human rights are further distinguished from intellectual property rights by their indefinite duration and the essentially personal, rather than financial, interests they protect.

These fundamental differences offer unique perspectives when human rights are considered in the interpretation of laws recognizing intellectual property rights. These differences also give rise to a clear potential for conflict in the exercise of human rights with the exercise of intellectual

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927. See Dominic McGoldrick, *Culture, Cultures, and Cultural Rights*, in *Economic, Social and Cultural Rights in Action 454* (Mashood A. Baderin & Robert McCorquodale eds., Oxford University Press 2007).

928. *The right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author (Article 15, paragraph 1(c), of the Covenant)* U.N. Doc. E/C.12/GC/17 (available at <http://www.unhcr.ch/tbs/doc.nsf/%28Symbol%29/E.C.12.GC.17.En?OpenDocument>).

929. *Ibid.*, para. 1.

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property rights; protection afforded to one party in respect of a particular aspect of culture or identity or product of intellectual effort (a geographic name, for example) under one system could be afforded to a different party under the other, or a right recognized under one may not be recognized at all under the other. Prominent scholars have found evidence of this in case law, yet this issue is not effectively addressed by either the TRIPS Agreement or human rights instruments.<sup>930</sup>

### 9.1.3 SOURCES OF HUMAN RIGHTS LAW

The sources of international human rights law are the same as those relied upon in other areas of international law and are identified in Article 38(1) of the Statute of the International Court of Justice. Of the three principal sources set out in Article 38(1) it bears noting that treaties possess a special relevance in the human rights context; there are now a significant number of treaties in force between States regarding matters of human rights, and leading scholars characterize treaties as being of 'paramount importance'<sup>931</sup> to international human rights law. Particularly significant among these is the United Nations Charter, to which nearly all States throughout the world are bound and by which they are united to the common general purpose of 'promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion'.<sup>932</sup> In addition to this broadly worded obligation there are a number of 'core'<sup>933</sup> treaties of global effect that deal with specific aspects of human rights.<sup>934</sup> Beyond these,

930. On the lack of a general cultural exception in WTO agreements, see Mary E. Footer & Christoph Beat Graber, *Trade Liberalization and Cultural Policy*, 3(1) J. Int'l Econ. L. 115 (2000); Deborah Z. Cass, *The constitutionalization of the World Trade Organization: legitimacy, democracy, and community in the international trading system* (Oxford University Press 2005). On the balance between free speech and free trade, see *Human Rights and International Trade* (Thomas Cottier, Joost Pauwelyn & Elisabeth Bürgi Bonanomi eds., Oxford University Press 2006).

931. Bruno Simma & Philip Alston, *The Sources of Human Rights Law: Custom, Jus Cogens, and General Principles*, Aust'l Y.B. Int'l L. 82, 85 (1988-1989).

932. Charter of the United Nations, Art. 1(3) (26 Jun. 1945, entered into force 24 Oct. 1945) 59 Stat. 1031; TS 993; 3 Bevans 1153.

933. United Nations, *Office of the United Nations High Commissioner for Human Rights: International Law*, <http://www2.ohchr.org/english/law/index.htm#core> (accessed 15 Oct. 2012).

934. These include the International Covenant on Civil and Political Rights (16 Dec. 1966, entered into force 23 Mar. 1976) 999 U.N.T.S. 171; International Covenant on Economic, Social and Cultural Rights (16 Dec. 1966, entered into force 3 Jan. 1976) 993 U.N.T.S. 3; International Convention on the Elimination of All Forms of Racial Discrimination, (21 Dec. 1965, entered into force 4 Jan. 1969) 660 U.N.T.S. 195; Convention on the Elimination of All Forms of Discrimination against Women (18 Dec. 1979, entered into force 3 Sep. 1981) U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, (10 Dec. 1984, entered into force 26 Jun. 1987) 39 U.N. GAOR Supp. (No. 51) at 197, U.N.

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numerous bi- and multilateral treaties contribute to the significant and growing framework of international human rights conventions.

Given the fundamental nature of human rights to all mankind, customary human rights law is also important in that its universal applicability allows for the exercise of rights even in the absence of a State's membership in treaties recognizing human rights.<sup>935</sup> That said, proving the existence of a customary rule is not without difficulty, as has already been shown in previous chapters of this book in the contexts of other bases of rights, because it requires broad empirical analysis of State practice and *opinio juris*. In the human rights context, the imprecision of the definition and scope of particular rights creates additional challenges in proving the existence of customary rules. In spite of this, there is broad agreement that certain basic human rights have assumed the status of customary international law,<sup>936</sup> though exactly which rights have done so is debated. Commonly on such a list are freedoms from genocide, slavery, torture and racial discrimination.<sup>937</sup> There is also support for recognizing certain rights of indigenous peoples as having crystallized into customary norms.<sup>938</sup>

Exposition of customary human rights law is further complicated by a degree of overlap between custom and general principles of international law. This is exemplified by the treatment of the right of self-determination, which is relevant to the use of geographic names by peoples in their full and free participation in representative government. The right of self-determination, which is discussed in detail in the next section of this chapter, has been characterized as having its origins in general principle,<sup>939</sup> in custom,<sup>940</sup> and arguably either principle or custom.<sup>941</sup> If a general practice becomes established State practice, the question becomes the origin of the norm. It is not necessary for the purposes of this study, however, to pinpoint

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Doc. A/39/51 (1984); Convention on the Rights of the Child (20 Nov. 1989, entered into force 2 Sep. 1990) 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989); International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (18 Dec. 1990, entered into force 1 Jul. 2003) 47 U.N. GAOR Supp. (No. 49A) at 262, U.N. Doc. A/47/49 (1990); Convention on the Rights of Persons with Disabilities (13 Dec. 2006, entered into force 3 May 2008) U.N. Doc. A/61/611; International Convention for the Protection of All Persons from Enforced Disappearance (20 Dec. 2006, entered into force 23 Dec. 2010) U.N. Doc. A/61/488.

935. See Provost, 55.

936. See Bilder, 10, citing Hurst Hannum, *The Status of the Universal Declaration of Human Rights in National and International Law*, 25 Ga. J. Int'l & Comp. L. 287 (1995-1996).

937. See for example, Gillian D. Triggs, *International Law: Contemporary principles and practices* 951-952 (2d ed., LexisNexis Butterworths 2011); *Restatement (Third) of the Foreign Relations Law of the United States* §702.

938. See Anaya, *Indigenous Peoples in International Law*, 64.

939. See for example, Hurst Hannum, *The Right of Self-Determination in the Twenty-First Century*, 55 Wash. & Lee L. Rev. 773, 775 (1998).

940. See for example, Triggs, 952.

941. See for example, Theodor Meron, *Human rights and humanitarian norms as customary law* 97 (Clarendon Press 1989).

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the origin of a particular norm; the critical concern here is whether a norm exists, not how it originated.

Finally, in identifying the sources of international human rights law, mention must be made of the significance of so-called 'soft law' because, as with the development of norms respecting the internet, much of the dialogue respecting human rights occurs outside the formal rubric of Article 38(1) of the Statute of the ICJ.<sup>942</sup> United Nations General Assembly resolutions, for example, are recommendations only and not legally binding on members. They are nevertheless of high significance because of their capacity to influence State practice. Likewise, the Universal Declaration of Human Rights is not a legally binding instrument; as stated in its Preamble, it is 'a common standard of achievement for all peoples and all nations.'<sup>943</sup> It too 'has force as a morally, though not legally, binding document, as a yardstick by which to measure the development of the rule of law, and its authority is enhanced by the universality of its acceptance by Members of the United Nations.'<sup>944</sup> These and other non-binding instruments establish standards that can result in changes to State behaviour and ultimately lead to the formal, voluntary, observable assertions of consensus by States needed to generate a rule of customary international law.<sup>945</sup> With this in mind, such standards are considered in this chapter as a fundamental aspect of the potential future recognition of (if not a formal source of existing) rights in geographic names under international human rights law.

## 9.2 PARTICULAR HUMAN RIGHTS RELEVANT TO GEOGRAPHIC NAMES

National identity, expression, culture and language are all interconnected, symbiotic elements of human existence: nations and national identity are frequently formed out of linguistic communities and culture is the product of the ways in which and languages with which humans express themselves. It is difficult, therefore, to partition these rights into discrete analytical sections and evaluate their relevance to geographic names without a certain degree of overlap. Further, the precise parameters of the rights to national identity and self-determination, expression, culture and language are not settled. Notwithstanding these challenges, compelling arguments can be made linking geographic names with each.

942. So-called 'soft law' and its broader relevance to this study is discussed in Part II, Chapter 4, section 4.2.3 above.

943. An alternative view is asserted in M.G. Kaladharan Nayar, *Human Rights: The United Nations and United States Foreign Policy*, 19(3) Harv. Int'l L.J. 813, 816-817 (1978) (arguing that the Universal Declaration in its entirety is customary international law).

944. Ruth Donner, *The Regulation of Nationality in International Law* 191 (2d ed., Transnational Publishers 1994).

945. See Simma & Alston, 90.

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The analysis in this chapter is structured to first identify the theoretical connections between a particular human right and geographic names. Where appropriate because of a deviation with an ordinary understanding of rights holders under international law, beneficiaries of the right in question are identified. The legal basis, substance and limitations of each right are then discussed in order to evaluate potential conflicts with ICANN's policy of requiring government authorization of applications for geographic new gTLDs. Conclusions are made at the end of the analysis of each right, and then summarized together at the end of the chapter.

9.2.1                   RIGHT TO NATIONAL IDENTITY AND RIGHT OF  
SELF-DETERMINATION

9.2.1.1                **Connections between National Identity and Geographic  
Names**

Human beings have long identified themselves by reference to nationality. It has been said that this is 'not inevitable ... [but] is extremely important for how people define themselves.'<sup>946</sup> In the day-to-day human experience, national identity is not only a complex legal concept deriving from State sovereignty but also a social concept deriving from the innate human processes of self- and group-identification. The oft-quoted English philosopher John Stuart Mill aptly described this social aspect, what he termed the 'feeling of nationality', as potentially 'generated by various causes':

Sometimes it is the effect of identity of race and descent. Community of language, community of religion, greatly contribute to it. Geographical limits are one of its causes. But the strongest of all is identity of political precedents; the possession of national history and consequent community of recollections; collective pride and humiliation, pleasure and regret, connected with the same incidents in the past. None of these circumstances however are either indispensable, or necessarily sufficient by themselves.<sup>947</sup>

The tendency to relate as individuals and groups with nations (though acknowledging the difficulty inherent in defining the term 'nation'<sup>948</sup>) is, in this view, a fundamental aspect of the human experience. This helps to explain the multi-purpose role of geographic names in human lives and

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946. James Summers, *Peoples and International Law: How Nationalism and Self-Determination Shape a Contemporary Law of Nations* 20 (Martinus Nijhoff 2007) (internal citations omitted).

947. John Stuart Mill, *Considerations on Representative Government* 294 (Parker, Son & Bourn 1861).

948. See James Mayall, *Nationalism and international society* 2 (Cambridge University Press 1990).

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specifically why a geographic name such as 'France' can serve not only the practical function of identifying a particular geographic location on a map but also the symbolic function of, to use Mill's term, the 'feeling of nationality' that is shared by the people of that location.

Effective articulation of one's 'feeling of nationality' is dependent upon having the freedom to make use of names and symbols representative of nationality. By corollary, governments' constraints on the use of national names and symbols impede the dynamic and ongoing processes of individual and group self-identification, ultimately impinging upon democratic freedom.<sup>949</sup> These tensions have crept into the online world, where they are likely amplified by three additional factors: the global reach of the internet as a communications medium, governments' limited ability to exert control due to their narrow role in internet governance, and the 'tremendous potential [of the internet] as a staging ground for identity-claims'.<sup>950</sup> The integral role that domain names play in online identification is unmistakably clear and has been so since the commercial launch of the DNS. Indeed, the primary reason for increasing the number of available gTLDs is to offer greater opportunity for under-represented communities to stake identity-claims in the internet.<sup>951</sup>

Even a cursory review of efforts at DNS policy-making in the ICANN environment reveals that most have had as their aim relieving what was identified early on as the 'considerable amount of tension [that] has unwittingly been created between, on the one hand, addresses on the Internet in a human-friendly form which carry the power of connotation and identification and, on the other hand, the recognized rights of identification in the real world...'.<sup>952</sup> Particular attention has been paid to trademark rights; the efforts of that community to transpose its rights in the 'real' (in other words, 'offline') world to the 'online' world have been explored in detail in Chapter 3.

The trademark community's experience is illustrative of the trend of relying on offline identity to justify claims to online identity, but the ubiquity of the internet in contemporary human experience could just as easily give rise to the reverse situation, where online identity is used to justify claims to offline identity. Illustrative of this situation is the Occupied Territory of Palestine's experience in seeking the creation of its own ccTLD. Creation of a .ps domain was initially refused because of the absence of the two-letter country code 'PS' from the International Standardization Organization's ISO 3166-1 list, inclusion in which requires United Nations recognition.<sup>953</sup> Interim measures involving the creation of a Palestinian second-level domain

949. See Coombe, 143.

950. Kyra Landzelius, *Introduction: Native on the net*, in *Native on the Net* 14 (Kyra Landzelius ed., Routledge 2006).

951. ICANN, *gTLD Applicant Guidebook*, Preamble.

952. WIPO, *WIPO 1 Report*, para. 22.

953. The process of ccTLD creation and delegation is discussed in Part I, Chapter 2, section 2.4.2 above.

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within the .int gTLD, which would have resulted in domain names taking the form `www.examplename.palestine.int`, were justified on the basis of Palestine's status as a Permanent Observer to the United Nations.<sup>954</sup> Palestinians were otherwise forced to choose between global gTLDs like .com and Israel's .is ccTLD.<sup>955</sup>

This example shows that in the modern world, offline and online identity are inextricably intertwined, and that achieving recognition of identity in the online world may for some be a milestone in an ongoing struggle for recognition of identity in the offline world.<sup>956</sup> It further shows that despite the trend of globalization, the world order is still heavily reliant upon States and state theory for legitimization. Palestine's status remains an issue of debate, but as a first step a .ps ccTLD required, and as a second step became part of, Palestine's claims to sovereignty. This helps to explain the significance attributed to .ps in its Domain Registration Policy, which states: 'Domain names under the .ps domain and the contents they point to, are considered virtual extensions of the Palestinian sovereignty with applicability of Palestinian law to the said extensions'.<sup>957</sup> The significance of the .ps domain has not been lost on the Palestinian internet community. In an early 2001 article, Ghassan Qadah, then-administrator of .ps and senior technology advisor to the Palestinian National Authority, characterized the ccTLD as an 'important symbol for the Palestinian state,'<sup>958</sup> the creation of which represented a breakthrough in legitimacy in the eyes of the global community.

The process of creating and delegating ccTLDs remains tied to the ISO-3166-1 list, and those seeking their creation today will face the same challenges faced by the proponents of the .ps ccTLD more than a decade ago. Prior to the launch of the New gTLD Program, comparable difficulties were faced by applicants of new gTLDs, whose chance of success was severely hampered by ICANN's discretion and the tight quantitative limits placed in the two 'proof of concept' gTLD expansion rounds. The New gTLD Program is so significant because it is without quantitative limits: any application for a new gTLD meeting the criteria set out in the *gTLD Applicant Guidebook* will result in the creation of the applied-for string. This is a real opportunity

954. See IANA, *Report on Request for Delegation of the .ps Top-Level Domain*, <http://www.iana.org/reports/ps-report-22mar00.htm> (22 Mar. 2000, accessed 15 Oct. 2012).

955. See Oscar S. Cisneros, *Dot-PS: Domain Without a Country*, *Wired.com* (12 Jan. 2001) (available at <http://wired.com/print/politics/law/news/2001/01/41135>).

956. 'The Palestinians' main objective was to achieve recognition for themselves not merely as refugees deserving of help on humanitarian grounds, but as a people with political aspirations.' David Hirst, *The Gun and the Olive Branch: The Roots of Violence in the Middle East* 461-462 (Thunder's Mouth Press/Nation Books 2003).

957. Palestinian National Internet Naming Authority, *PNINA Registration Policies and Procedures for Registering Domains under the .ps ccTLD*, section 2.2, <http://www.pnina.ps/domains/registration-policy/> (accessed 15 Oct. 2012).

958. Cisneros.

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for previously unsuccessful as well as first time applicants to stake identity claims in the DNS.

Geographic new gTLDs may be desired by those who identify in the offline world with existing, recognized nations or territories and wish to transpose their offline identity onto the online environment just as trademark owners have done with their offline trademark rights. The human rights to expression, culture and language which are discussed in the subsequent sections of this chapter are most relevant to that situation. Others may, like the proponents of the .ps ccTLD, hope to facilitate the realization of their offline political aspirations through recognition of their online identity in the form of a top-level domain. For those applicants, ICANN's New gTLD Program represents an opportunity to establish an online national identity as a platform to acquiring offline national identity. The right of self-determination, also inherently linked to identity,<sup>959</sup> is also potentially relevant in that context. Before delving into the substance, scope and limitations of the rights of national identity and self-determination, however, a distinction should be made between their respective beneficiaries.

#### **9.2.1.2 Beneficiaries of the Right to National Identity and Right of Self-determination**

An initial distinction can be made between the right to national identity and the right of self-determination: in the case of the former, international law recognizes the rights of individuals while in the latter, international law recognizes the rights of peoples.<sup>960</sup> In other words, while the right to national identity follows the pattern of individual human rights, self-determination is collective in nature. This is not to suggest that individual rights may not also have the effect of protecting collective interests, but rather to emphasize that international law singles out certain groups for additional protection through the right of self-determination.<sup>961</sup>

The term 'peoples' is not clearly defined in the international conventions in which it is used, nor has a generally accepted definition emerged from the interpretation of those conventions.<sup>962</sup> This raises particular

959. See Karen Knop, *Interpretation and Identity*, in *Diversity and Self-Determination in International Law* (Cambridge University Press 2002).

960. Common Articles 1(1) of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights provide: 'All peoples have the right of self-determination.' Further, the United Nations Charter provides in Article 1(2) that one of the purposes of the United Nations is to '[t]o develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace' (emphasis added). By contrast, Article 15(1) of the Universal Declaration of Human Rights recognizes the right of 'everyone ... to a nationality'.

961. See Brownlie, 579-580.

962. See Martti Koskenniemi, *National Self-Determination Today: Problems of Legal Theory and Practice*, 43(2) *Int'l & Comp. L.Q.* 241 (1994).

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challenges, although it has been suggested that the very fact of its being undefined is what makes the term ‘peoples’ so significant: ‘If it is claimed that a group is a people there is no agreed standard against which that claim can be measured. It is purely a matter of perception. ... [This] may be a problem for lawyers, but it lubricates the politics of nationalism.’<sup>963</sup> Distinctions have been made between the terms ‘peoples’ and ‘populations’, with the former being ‘generally regarded as implying a greater and more positive recognition of group identity and corresponding attributes of community.’<sup>964</sup> For reasons that are discussed in detail in the next section of this chapter, having the status of a ‘people’ has been equated with claims to independent statehood. The term ‘populations’, on the other hand, has traditionally been used to signify a lower level of recognition in international law, and it is this term that States prefer when a claim to rights is seen as a threat to sovereignty. This is a distinction that relies on a narrow positivist view,<sup>965</sup> and it has proven to be an obstacle to communities that do not fit within, and in some cases do not even aspire to fit within, the State-centric model.

A clear illustration of this problem is found in the efforts of indigenous peoples to achieve recognition under international law. It is in this context that much of the discussion of the beneficiaries of human rights takes place. The world’s population has been said to include roughly 300 million indigenous people,<sup>966</sup> yet despite their numbers and the fact that they inhabit almost every part of the world, it is difficult to assess with precision their status under international law because of this problem of terminology. Some States are reluctant to use the phrase ‘indigenous peoples’ in the international law context because ‘it is too close to the concept of “people”’<sup>967</sup> and thus the right of self-determination. In spite of this it has been argued that it is ‘in any case proper to conclude that, as a matter of already existing international law, the principle or right of self-determination applies in one way or another to indigenous peoples.’<sup>968</sup> Why some States might continue to find this problematic turns on certain outdated conceptions of the substance of the contemporary right of self-determination.

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963. Summers, xlii (internal citations omitted).

964. Anaya, *Indigenous Peoples in International Law*, 60.

965. *Ibid.*, 101. See also Knop, 53-54.

966. See Alessandro Fodella, *International Law and the Diversity of Indigenous Peoples*, 30 *Vt. L. Rev.* 565, 566 (2006).

967. Summers, xliii. See also Anaya, *Indigenous Peoples in International Law*, 61-72.

968. Anaya, *Indigenous Peoples in International Law*, 112. See also Glenn T. Morris, *In Support of the Right of Self-Determination for Indigenous Peoples under International Law*, 29 *German Y.B. Int'l L.* 277 (1986).

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### 9.2.1.3 Legal Basis, Status, and Substance of the Right of Self-determination

The right of self-determination is expressed in the UN Charter, which provides in Article 1(2) that one of the purposes of the United Nations is to 'develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace'. This is supported by obligations under Article 55 to promote economic and social cooperation. The right of self-determination is codified as common Article 1(1) in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), by virtue of which peoples 'freely determine their political status and freely pursue their economic, social and cultural development.'

Because of its acknowledged<sup>969</sup> *jus cogens*<sup>970</sup> status, the right of self-determination 'informs and complements other general principles of international law, viz., of State sovereignty, the equality of states, and the equality of peoples within a State.'<sup>971</sup> Historically, the substance of the right of self-determination has been conjoined with its remedial aspects, the 'most controversial'<sup>972</sup> and prominent of which is secession. With the demise of colonialism and the inclusion of the right of self-determination in the ICCPR, however, it has been observed that a shift occurred from an externally-focused right to an internally-focused<sup>973</sup> right which:

ceased to be a rule applicable only to specific territories (at first, the defeated European powers; later, the overseas trust territories and colonies) and became a right of everyone. It also, at least for now, stopped being a principle of exclusion (secession) and also became one of inclusion: the right to participate. The right now entitles peoples in all

969. See Crawford, 101; Brownlie, 580-581; Triggs, 995.

970. Art. 53 of the Vienna Convention on the Law of Treaties identifies *jus cogens* as 'a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.'

971. See Brownlie, 582. See also Francisco Forrest Martin, *Delineating a Hierarchical Outline of International Law Sources and Norms*, 65(2) Saskatchewan L. Rev. 341, 343 (2002).

972. Sarah Joseph et al., *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary* 101 (Oxford University Press 2000). See also Anaya, *Indigenous Peoples in International Law*, 99 ('In its most prominent modern manifestation within the international system, self-determination has promoted the demise of colonial institutions of government and the emergence of a new political order for subject peoples.'). On the historical connection between self-determination and colonialization with specific examples, see Nathaniel Berman, *Sovereignty in Abeyance: Self-Determination and International Law*, 7 Wis. Int'l L.J. 51, 84-103 (1988).

973. See Rupert Emerson, *Self-Determination*, 465-466; Joseph et al., 101-104; Triggs, 996.

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states to free, fair and open participation in the democratic process of governance freely chosen by each state.<sup>974</sup>

Accordingly, contemporary articulations of the right of self-determination recognize the right of peoples 'to be full and equal participants in the creation of the institutions of government under which they live and, further, to live within a governing institutional order in which they are perpetually in control of their own destinies.'<sup>975</sup> The right is thus called upon to help peoples 'assert their identities, to preserve their languages, cultures, and traditions and to achieve greater self-management and autonomy, free from undue interference from central governments.'<sup>976</sup> This broad understanding of self-determination acknowledges the human need to associate in and self-identify as members of groups<sup>977</sup> and not be unduly restricted in doing so. The right to self-determination so understood can be seen to prevent States from exercising control over identity symbols (such as geographic names) without the input of the peoples who identify with those symbols.

The right of self-determination does not, however, shed light on the existence of an exclusive right of States in geographic names. Rather, what the right of self-determination does is prevent States from taking unilateral, unconsulted decisions respecting the name by which a 'people' identifies. Unilateral, unconsulted decisions regarding the control of geographic names in the DNS could in this way be deemed analogous to State practices in the offline world that have the effect of forcibly incorporating indigenous peoples into a majority society to the detriment of their group identity, which in turn affects their ability to exercise their economic, social and cultural rights.<sup>978</sup> Arguably, a decision by a central government to deny a 'people' the ability to identify online by a particular name could prevent the group's preservation and expression of its identity, which could logically be seen to impinge upon the group's ability to exercise its economic, social and cultural rights.

974. Thomas M. Franck, *The Emerging Right to Democratic Governance*, 86 Am. J. Int'l L. 46, 58-59 (1992).

975. Anaya, *Indigenous Peoples in International Law*, 113 (internal citations omitted).

976. Australian Government Delegation, Speaking Notes on Self-Determination, 2 (24 Jul. 1991), quoted in Anaya, *Indigenous Peoples in International Law*, 111.

977. See Thomas M. Franck, *Clan and Superclan: Loyalty, Identity and Community in Law and Practice*, 90 Am. J. Int'l L. 359, 376-382 (1996) (discussing 'identity as a personal act of self-determination').

978. As an example of such a case, see Inter-American Commission on Human Rights, *Report on the Situation of Human Rights of a Segment of the Nicaraguan Population of Miskito Origin and Resolution on the Friendly Settlement Procedure Regarding the Human Rights Situation of a Segment of the Nicaraguan Population of Miskito Origin*, O.A.S. Doc. OEA/Ser.L/V/II.62, doc. 10, rev. 3 (1983) OEA/Ser/L/V/II.62, doc. 26 (1984) (*Case No. 7964 (Nicaragua)*). On the links between participation and economic, social and cultural rights, see Richard Burchill, *Democracy and the Promotion and Protection of Socio-Economic Rights*, in *Economic, Social and Cultural Rights in Action* 375-379 (Mashood A. Baderin & Robert McCorquodale eds., Oxford University Press 2007).

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Finally but importantly, the right of self-determination prevents particular actions taken by States. It does not prevent actions by non-State actors, amongst which notable in the context of this study is ICANN. A challenge could not be raised by a ‘people’ against ICANN asserting that its policies regarding geographic new gTLDs violate their right to self-determination. It would need to be considered whether such a challenge could be raised against the United States in order to compel ICANN, a corporation registered in that jurisdiction, to change its policy.<sup>979</sup>

#### **9.2.1.4 Legal Basis, Substance, and Limitations of the Right to National Identity**

There is ‘a growing consciousness [of the existence of a] personal right to compose one’s identity’,<sup>980</sup> and much has been written about national identity in particular national contexts.<sup>981</sup> International law recognizes a right to national identity,<sup>982</sup> but that right is of only limited application to geographic names.

The most direct articulation of a right to national identity can be found in Article 8 of the Convention on the Rights of the Child, which requires that ‘States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.’ Commentary indicates that ‘the purpose of this provision is to prevent a child from being afforded less protection by the society and the State because he is stateless’, not to ‘make it an obligation for States to give their nationality to every child born in their territory.’<sup>983</sup> In other words, the concern is that children have a nationality rather than that they have a *particular* nationality.

Article 24(3) of the ICCPR recognizes the ‘special’<sup>984</sup> right of all children to ‘acquire a nationality’. Article 15(1) of the Universal Declaration

979. See n. 923 above.

980. Franck, *Clan and Superclan*, 359.

981. See for example, Ahmet İçduygu & Özlem Kaygusuz, *The Politics of Citizenship by Drawing Borders: Foreign Policy and the Construction of National Citizenship Identity in Turkey*, 40(6) *Middle Eastern Studies* 26 (2004); Aneta Mihaylova, *National versus Regional Identity: the ‘Other’ Romanians in Greater Romania*, 1(2006) *Balkan Studies* 9 (2006); Nan Seuffert, *Jurisprudence of National Identity: Kaleidoscopes of imperialism and globalisation from Aotearoa New Zealand* (Ashgate 2006); Lauren Gilbert, *National Identity and Immigration Policy in the U.S. and the European Union*, 14(1) *Colum. J. Eur. L.* 99 (2007-2008); Jo Eric Khushf Murkens, ‘We want our identity back’: the revival of national sovereignty in the German Federal Constitutional Court’s decision on the Lisbon Treaty, 2 *Bundesverfassungsgericht* 530 (2010).

982. See generally, Donner.

983. United Nations Office of the United Nations High Commissioner for Human Rights, *CCPR General Comment No. 17: Rights of the child (Art. 24)* para. 8 (1989) (available at <http://www.unhcr.ch/tbs/doc.nsf/0/cc0f1f8c391478b7c12563ed004b35e3?Opendocument>).

984. Nowak, 560.

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of Human Rights, by contrast, recognizes the right of ‘everyone ... to a nationality’, while Articles 6 and 33 of the Declaration on the Rights of Indigenous Peoples similarly do so in respect of indigenous persons. These provisions support the conclusion that a person’s possession of some national identity is protected, but this has no bearing on a person’s right to possess a particular nationality.

The latter issue is one left to domestic law, as provided for in the 1930 Convention on Certain Questions in Relation to the Conflict of Nationality Laws<sup>985</sup> and confirmed in the seminal *Nottebohm* case, in which it was said that it ‘is for every sovereign State ... to settle by its own legislation the rules relating to the acquisition of its nationality, and to confer that nationality by naturalization granted by its own organs in accordance with that legislation.’<sup>986</sup> International law thus only imposes upon States an obligation to ensure that each person has an identity.

It is difficult to see how this right could be infringed by a policy of exclusive state control of geographic names, unless a decision to deny a person the right to identify him/herself online using a particular name puts that person’s possession of having any nationality at risk. At the same time, neither does the right to national identity offer specific support to States’ claims of exclusivity in geographic names. A person’s right to use a particular name in order to identify him or herself is more logically characterized in terms of a right of self-expression, so it is to this particular human right that focus now turns.

## 9.2.2 RIGHT TO FREEDOM OF EXPRESSION

### 9.2.2.1 Connections between Free Expression and Geographic Names

The tendency with which human beings identify themselves according to their nationality has been highlighted in the previous section of this chapter in order to draw a connection between geographic names and the human rights of national identity and self-determination. The same tendency can be relied upon in connecting geographic names and the human right to freedom of expression. Geographic names are integral to human vocabulary. Beyond their obvious roles as identifiers of a particular geographical location and their necessity in articulations of national identity, geographic names also help individuals to describe and articulate opinions and ideas about the world, its people, politics, culture, environment and products. Their broad

985. Convention on Certain Questions in Relation to the Conflict of Nationality Laws, Art. 1. (12 Apr. 1930, entered into force 1 Jul. 1937) 179 L.N.T.S. 89.

986. *Nottebohm Case (second phase)*, Judgment of April 6th, 19 JJ, I.C.J. Reports 1955, p.4, 20-21. For an identification of rules commonly adopted by States to determine nationality, see Brownlie, 388-394.

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range of uses, non-commercial and commercial, is evidenced by the multiplicity of potential sources of rights in them as identified and discussed in this and earlier chapters.

While being mindful of the sorts of restrictions against false or misleading use that have been examined in the previous chapter, it is difficult to discuss the world without being able to use the names that identify the subject of discussion. It has been remarked that '[a] news reporter cannot very well be expected to refer to "the football club based in Manchester, England" every time he or she wishes to report on the exploits of Manchester United.'<sup>987</sup> Taking this example one step further and focusing on geographic names rather than on trademarks, neither can a reporter (or indeed a school pupil, a journalist, a researcher or a person at the dinner table) be rationally expected to refer to 'the football club based in the second most populous urban district in the country that occupies two-thirds of the island nation located between roughly 54.5 and 52.2 degrees latitude and through which the prime meridian runs'.

Requiring that we communicate in this way when referring to geographic names would almost surely chill communication; this is not an end to which a society that favours intellectual and social development aspires.<sup>988</sup> This helps to explain why the right to free expression is considered one of the most fundamental of all human rights, and it opens the door to a correlative human right to express one's self using geographic names. Placing the articulation of geographic names in the DNS exclusively in the control of States arguably impinges upon this right, bearing in mind the potentially commercial as well as non-commercial nature of expression involving geographic names.<sup>989</sup>

#### **9.2.2.2 Legal Basis, Substance, and Limitations of the Right to Freedom of Expression**

The right to free expression is 'not infrequently termed the core of the [International] Covenant [on Civil and Political Rights] and the touchstone for all other rights guaranteed therein.'<sup>990</sup> Article 19 of the ICCPR sets out the scope of the right as well as its limitations:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all

987. Frederick M. Abbott et al., *International Intellectual Property in an Integrated World Economy* 271 (Aspen 2007).

988. See Joseph et al., 386.

989. See n. 830 above and accompanying discussion on the need to balance consumer protection with freedom of expression.

990. Nowak, 438 (internal citations omitted).

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kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (ordre public), or of public health or morals.

Paragraph 1 acknowledges the ‘right to hold opinions’. This right is interpreted as absolute in its passive form (possession), but pursuant to paragraphs 2 and 3, not absolute in its active form (expression).<sup>991</sup> This means that a person may hold whatever opinions he/she wishes in his/her mind, but the communication of those opinions to others may be restricted in certain situations.<sup>992</sup> The use of the term ‘opinions’ here is perhaps misleadingly limiting; it has been noted that the use of the phrase ‘information and ideas of all kinds’ in paragraph 2 was intended to signal that ‘every communicable type of subjective idea and opinion, of value-neutral news and information, of commercial advertising, art works, political commentary regardless of how critical, pornography, etc., is protected’,<sup>993</sup> including information and ideas expressed in commercial contexts or of a commercial nature.<sup>994</sup>

The broadly worded range of protected types and means of expression make it clear that the right to free expression applies to all types of expression, including expression made on the internet and irrespective of whether online activity is considered inherently commercial. This is a particularly significant point to the question of whether international law recognizes rights in geographic names, because many of the other bases of rights explored in the previous chapters of this book (trademarks, geographical indications, prevention of unfair competition, dilution, personality rights) rely on commercial activity. The right to free expression notably also applies irrespective of whether the act in question is considered political—even politically critical—expression.<sup>995</sup> It could thus potentially be called upon to

991. See Joseph et al., 387.

992. See for example, *Faurisson v. France*, 4 I.H.R.R. 444 (Hum. Rts. Comm. 1996).

993. Nowak, 444.

994. See for example, *Ballantyne, Davidson, McIntyre v. Canada*, U.N. Doc. CCPR/C/47/D/359/1989 and 385/1989/Rev.1 (1993).

995. The individual’s right to engage in politically critical expression has been deemed paramount even where States have based this on national security and public order. See for example, *Mukong v. Cameroon*, 2 I.H.R.R. 131 (Hum. Rts. Comm. 1995).

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defend the registration of a geographic domain name with a connotation that is considered undesirable by a relevant government.<sup>996</sup>

The right to freedom of expression may only be restricted in furtherance of the aims specified in ICCPR Article 19(3), about which it is recorded that 'more than 30 concrete proposals for restrictions'<sup>997</sup> were made in the drafting process. Of these 'most related to expression that instigates or incites to criminal actions or violent overthrow of the government, reveals State or trade secrets, undermines friendly relations with other States, impairs the independence of the judiciary, infringes rights of personality (honour, good reputation) or is pornographic or blasphemous.'<sup>998</sup> The final text takes a different approach, identifying not specific instances in which expression can be restricted, but rather permissible purposes justifying restriction. Of these, the purposes of protecting national security and public order ('ordre public') and ensuring respect for the rights of others have greater relevance to geographic names than the purposes of protecting public health or morals.

Protection of national security focuses on activities that pose 'serious cases of political or military threat to the entire nation'.<sup>999</sup> Commonly falling within this ambit are disclosures of State secrets.<sup>1000</sup> This is clearly not relevant to the use of geographic names, save in the rare constellation in which revelation of a particular name in State secrets has the effect of identifying the State in question. The primary issue in such a case is, in any event, the revelation of the secret rather than the use of the State's name. Such a constellation would also implicate the right to freedom of information recognized in Article 2(1) of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, which is qualified by Article 19(3) allowing for restrictions on the basis of '[r]espect of the rights or reputations of others' and 'protection of national security or of public order (ordre public), or of public health or morals'. Yet in practice, national security has been treated more broadly, merging with 'public order', which is directed at activities that affect the 'peaceful and effective functioning of society'.<sup>1001</sup> Accordingly, restrictions are commonly aimed at the sorts of expressions 'which may incite crime, violence or mass panic'<sup>1002</sup> but would also apply to expressions advocating the overthrow or de-stabilization of a government.

996. An example is the [www.tamilnet.com](http://www.tamilnet.com) website, discussed in Mark Whitaker, *Internet counter counter-insurgency: TamilNet.com and ethnic conflict in Sri Lanka*, in *Native on the Net* 255-271 (Kyra Landzelius ed., Routledge 2006).

997. Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, 457.

998. *Ibid.*

999. *Ibid.*, 463-464.

1000. See Joseph et al., 400.

1001. *Ibid.*, 396.

1002. *Ibid.*, 396 and 401, citing *Kim v. Republic of Korea* (574/94) and *Park v. Republic of Korea* (628/95).

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While geographic names could be (and indeed have been, as the Catalonian linguistic community's experience with the .cat gTLD application demonstrates<sup>1003</sup>) interpreted as an expression of destabilizing sentiments, this is countered by the fact that geographic names are not inherently politically threatening. They are not inherently fighting words, nor are they inherently directed at inciting the sorts of grave situations to which national security and public order are directed. They could plausibly be seen to indirectly play a role in inciting 'crime, violence, or mass panic', but such a determination is entirely dependent on the context in which they are used, bearing in mind the need to 'specify the precise nature of the threat allegedly posed by the author's exercise of freedom of expression.'<sup>1004</sup>

A stronger case can be made that a second- or lower level domain name has the potential to incite 'crime, violence or mass panic' than a gTLD string because of the connection between lower level domain names and content. The function of a top-level domain, by contrast, is not to identify content but to provide a service, a channel of communication. An indirect link to content could be made by targeting a top-level domain at particular domain name registrants (e.g., a policy of restricting domain name registration to members of an anti-government group), but this is clearly an exception and not the rule. Restricting all uses of geographic names on this basis would surely prove excessive and unnecessary. Rather, the determination that a name disrupts national security or public order can be made on a case-by-case basis only.

This conclusion has special significance to applications for new gTLDs because of the provision within the *gTLD Applicant Guidebook* of a 'limited public interest objection' (what in earlier drafts was termed the 'morality and public order exception').<sup>1005</sup> Each objection made on this ground must likewise be considered on a case-by-case basis. In relying on this objection, governments should take care to specify the precise nature of the threat to national security or public order. A statement of discomfort with an applied-for name, as is made possible by the *gTLD Applicant Guidebook* in its provision for 'early warning' by the Governmental Advisory Committee (GAC),<sup>1006</sup> will not suffice to satisfy States' obligations under Article 19(3)(b) of the ICCPR.

Lastly, restrictions of expression are permitted for the purpose of ensuring 'respect of the rights or reputations of others'. This study could hopefully be of use in this regard. The existence of multiple sources of

1003. The .cat gTLD application is discussed in Part I, Chapter 1, section 1.2.2.3 above.

1004. *Keun-Tae Kim v. Republic of Korea*, para. 12.5, U.N. Doc. CCPR/C/64/D/574/1994 (U.N. Hum. Rts. Comm. 1999).

1005. ICANN, *gTLD Applicant Guidebook*, section 3.2.1. On the potential applicability of the so-called 'limited public interest objection' to geographic new gTLD applications, see Part I, Chapter 1, section 1.2.2.3 above.

1006. ICANN, *gTLD Applicant Guidebook*, section 1.1.2.4. See also ICANN, *New gTLD Program Explanatory Memorandum: Early Warning*.

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potentially conflicting rights in geographic names revealed in this study requires that States consider and prioritize in the application of Article 19(3)(a) of the ICCPR these multiple interests proportionately in domestic law. It is not at all clear how this can be achieved in the context of the DNS, however, given that the delegation of a new gTLD to one applicant has the practical effect of denying all others across the globe the use of that name as a top-level domain string. This problem is exacerbated by a policy of rejecting strings on the basis of confusing similarity.<sup>1007</sup>

Recent experience suggests that the winner in a contest between self-expression rights and property rights is increasingly likely to be a property rights holder.<sup>1008</sup> This raises interesting implications that go beyond mere domain name disputes into the realm of freedom and liberty, and the formation of DNS policy offers an opportunity to explore these. The challenge that arises not only in the exercise of the right to freedom of expression but all of the human rights considered in this chapter is that to the extent that persons or ‘peoples’ have a right to use a geographic name, that right can only practically be exercised in the context of top-level domains by one registry operator (or, in respect of a community based application, by one operator on behalf of a community). These issues lie beyond the scope of this study, but are raised here for future discussion.

A more general question is whether the right to freedom of expression encompasses a right to express oneself using a geographic name. This is a right the exercise of which depends entirely on context. It would be difficult to specify beyond the general limitations articulated in Article 19(3) of the ICCPR situations in which a person’s expression of a geographic name must categorically be prohibited. ICANN should for that reason avoid imposing such a blanket prohibition in new gTLD policy. It is further the case that Article 19 of the ICCPR does not require the prohibition of expression in any form or for any purpose; rather, it gives States the possibility of imposing restrictions where these can be duly justified. This neither specifically proves nor denies the existence of an exclusive right of States to geographic names, though it does at least suggest that multiple interests may exist in names, which in turn suggests non-exclusivity. It also indicates that where restrictions imposed by States have the effect of impinging upon free expression, those restrictions must be for one of the purposes identified in Articles 19(3)(a) or (b). The likelihood of those circumstances being present in the context of an application to ICANN for a new gTLD is remote. In summary, arguments justifying restrictions on geographic gTLDs for the purposes of national security or public order must be individually scrutinized rather than assumed.

<sup>1007</sup> See ICANN, *gTLD Applicant Guidebook*, section 2.2.1.1.2.

<sup>1008</sup> See Wendy Gordon, *A Property Right in Self-Expression: Equality and Individualism in the Natural Law of Intellectual Property*, 102 *Yale L.J.* 1533, 1537 (1993) (positing that ‘[t]he incantation “property” seems sufficient to render free speech issues invisible’).

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## 9.2.3 RIGHT TO CULTURE

## 9.2.3.1 Connections between Culture and Geographic Names

Although certainly not confined by geographical boundaries, culture is inherently linked to geography. Many aspects of culture are drawn from the land, with climate, topography, presence of natural resources, proximity to neighbours and sea access, among other things, having an impact on how people interpret their surroundings.<sup>1009</sup> These interpretations and the ways in which people express them through such things as music, arts, literature, lifestyle, religious beliefs and traditions meld together to form culture, which the United Nations Educational, Scientific and Cultural Organization (UNESCO) defines as the 'set of distinctive spiritual, material, intellectual, and emotional features of a society or a social group'.<sup>1010</sup> The people that share these features often, though not always, also share geographical location. Sometimes the link between geography and culture is not recent, relying instead on historic places. An example of this is Indonesia's attempt to develop a national culture following independence through initiatives that included the creation of a new national motto expressed in an ancient language no longer in use but 'connected to the past of ancient feudal kingdoms on Java and Bali, with few remaining links to the rest of Indonesia'.<sup>1011</sup> One can also point to geographic name changes motivated by decolonization and inspired by names of places of historical significance, including Bombay/Mumbai<sup>1012</sup> and Burma/Myanmar.<sup>1013</sup>

Geographic names can be considered representative or symbolic of a nation and its culture, though the appropriateness of the term 'national culture' is debatable. Few, if any, modern States are mono-cultural.<sup>1014</sup> To the extent that there is a recognized 'national culture', this is likely to be the culture of a dominant majority, the promotion of which at one extreme risks eliminating minority cultures. At the other extreme lies the appropriation of minorities' cultural symbols into national culture without the support or

1009. See Johanna Gibson, *The lay of the land: the geography of traditional cultural expression*, in *Intellectual Property and Traditional Cultural Expressions in a Digital Environment* 182-204 (Christoph Beat Graber & Mira Burri-Nenova eds., Edward Elgar 2008); Triggs, 319-323.

1010. Universal Declaration on Cultural Diversity, Preamble, adopted by the UNESCO General Conference on 2 Nov. 2001, 31C/Resolution 25.

1011. Christoph Antons, *Traditional cultural expressions and their significance for development in a digital environment: examples from Australia and Southeast Asia*, in *Intellectual Property and Traditional Cultural Expressions in a Digital Environment* 289 (Christoph Beat Graber & Mira Burri-Nenova eds., Edward Elgar 2008).

1012. See generally, Thomas Blom Hansen, *Wages of violence: naming and identity in postcolonial Bombay* (Princeton University Press 2001).

1013. See generally, Gustaaf Houtman, *Mental culture in Burmese crisis politics: Aung San Suu Kyi and the National League for Democracy* 43-47 (Institute for the Study of Languages & Cultures of Asia & Africa 1999).

1014. See McGoldrick, 450.

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permission of the affected minorities.<sup>1015</sup> The focus in discussions of protecting and promoting cultural rights is therefore less on nations and more on minority and particularly indigenous groups within nations, based on the assumption 'that majorities can take care of, and protect, their own dominant culture.'<sup>1016</sup>

Indigenous peoples' culture is particularly linked to geography because the characterization of a people as 'indigenous' generally points to the inhabitation of a particular geographic territory.<sup>1017</sup> Western thinking on indigenesness tends to go one step further by identifying the group as the first inhabitants of a territory, meaning that they lived in the geographic location prior to the arrival of colonizing outsiders.<sup>1018</sup> The cultural rights of indigenous peoples so-defined are therefore called upon to 'preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems'.<sup>1019</sup> In other parts of the world, indigenesness is not seen as dependent on colonization or minority status; in some countries 'the majority or even the whole population'<sup>1020</sup> is characterized as indigenous. In practice, the lack of an agreed definition of 'indigenous people' makes it difficult to apply these understandings to real-life disputes. Further, as recognized at the beginning of this chapter, some States are reluctant to formally recognize the link between 'indigenous peoples' and territory out of concerns that this could lead to claims of independent statehood.<sup>1021</sup>

Even without an agreed legal definition of 'indigenous peoples', it is clear that indigenesness involves a connection to geographic territory. For many indigenous groups, the relationship with land and their environment has great significance to their culture.<sup>1022</sup> For these groups in particular, the names used to identify the land may have a cultural meaning beyond mere identification; members may wish to call upon the human right to culture to

1015. See for example, *Harold Joseph Thomas v. David George Brown & James Morrison Vallely Tennant*, 215 F.C.A. (Fed. Ct. Aust'1 1997).

1016. McGoldrick, 452.

1017. See Anaya, *Indigenous Peoples in International Law*, 3; Landzelius, *Introduction: Native on the net*, 34 n. 5 (offering the following definition of 'indigenous' as 'conventional': 'disadvantaged descendants of those peoples that inhabited a territory prior to formation of a state').

1018. See Jeremy Waldron, *Indigeneity? First Peoples and Last Occupancy*, 1 N.Z. J. Pub. & Int'l L. 55 (2002).

1019. Landzelius, *Introduction: Native on the net*, 34 n. 5, quoting International Work Group for Indigenous Affairs ([www.iwgia.org](http://www.iwgia.org)).

1020. Antons, 291.

1021. See Anaya, *Indigenous Peoples in International Law*, 65. See also discussion earlier in this chapter, at Part III, Chapter 9, section 9.2.1.3, on the right of self-determination.

1022. See Fodella, 565-566.

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protect this from misuse or misappropriation by others who do not comprehend its significance.<sup>1023</sup> Further, to deprive such a group of the free use of its name may impinge upon its ability to interact materially and intellectually, to preserve and create its culture.

**9.2.3.2 Legal Basis and Substance of the Right to Culture**

The human right to culture is widely recognized in human rights law instruments, both binding and non-binding: it is provided for in varying terms in the Universal Declaration of Human Rights (Articles 22 and 27), the ICESCR (Article 15(1)(a)), the ICCPR (Article 27), the Convention on the Rights of the Child (Article 30) and the Declaration on the Rights of Indigenous Peoples (Articles 8, 11 and 31), and it is the focus of UNESCO's Convention on the Protection and Promotion of Cultural Diversity of Cultural Expressions<sup>1024</sup> and the Convention for the Safeguarding of Intangible Cultural Heritage.<sup>1025</sup> Each of these instruments refers in some way to a right to participate in or practice a culture, but none expressly acknowledges a right to possess a culture. Article 15(1)(a) of the ICESCR is illustrative of this point: it specifically recognizes 'the right of everyone (a) To take part in cultural life', and 'the participatory element has been interpreted as including a right to express one's own cultural life.'<sup>1026</sup> Yet it must logically be said that a 'right to participate in a culture can only exist if there is a culture'.<sup>1027</sup> This argument is supported by the specific obligation imposed upon States by Article 15(2) to 'conserve, develop and diffuse culture.'

Beyond this right of all persons to 'take part' in culture, members of minorities are specifically afforded rights to 'enjoy' their cultures. Article 27 of the ICCPR relevantly provides:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their religion, or to use their own language.

The cultural rights of children of minority groups are recognized in similar terms in Article 30 of the Convention on the Rights of the Child.<sup>1028</sup> Articles

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1023. See Antons, 296.

1024. Convention on the Protection and Promotion of the Diversity of Cultural Expressions (18 Dec. 1990, entered into force 18 Mar. 2007) 33C/Res. 42.

1025. Convention for the Safeguarding of the Intangible Cultural Heritage (17 Oct. 2003, entered into force 20 Apr. 2006) 32C/Res. 32.

1026. McGoldrick, 453.

1027. *Ibid.*, 454.

1028. Convention on the Rights of the Child, Art. 30 (20 Nov. 1989, entered into force 2 Sep. 1990), 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989): 'In those

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8, 11 and 31 of the Declaration on the Rights of Indigenous Peoples<sup>1029</sup> relatedly call for the recognition of cultural rights of indigenous peoples.

Certain difficulties arise in the application of cultural rights to counter States' claims of exclusive rights in geographic names and their use in the DNS. First, the substance of the right to culture is very much in debate because of the fact that culture 'is not a static concept: cultures change all the time'.<sup>1030</sup> Nor is culture a universal concept such that it could be definitively said that a right to control or use geographic names is an essential aspect of all cultures. Jurisprudence in this area reveals that a determination that the right to culture encompasses a right to control or use a geographic name depends upon the importance of the name in question to the existence of the particular culture in question.

A further issue arises in that even if it is determined that the use of a geographic name is integral to a particular culture, it is not axiomatic that a policy of exclusive State control over geographic names impinges upon the right of persons, children or minorities to take part in or enjoy their culture. That Article 15 of the ICESCR specifically provides for the 'right *freely* to participate' (emphasis added) is significant, however, in that restrictions on the right to use a geographic name are patently inhibitive of *free* participation. In the context of the DNS and given the integral role played by the internet in creating, preserving and communicating culture,<sup>1031</sup> a policy of requiring government authorization of applications for geographic new

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States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.'

1029. United Nations Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly 2 Oct. 2007, G.A. Res. A/RES/61/295:

Art. 8(1): Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.

Art. 11(1): Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

Art. 31(1): Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

1030. Lyndel V. Prott, *Cultural Rights as Peoples' Rights in International Law*, in *The Rights of Peoples* 95 (James Crawford ed., Oxford University Press 1992).

1031. See Kathryn Bowrey, *Law & Internet Cultures* (Cambridge University Press 2005); Mira Burri-Nenova, *The long tail of the rainbow serpent: new technologies and the protection*

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gTLDs would arguably require involvement of the State to a degree that impinges upon *free* participation in online cultural life. While there are no cases on these specific facts, an analogy can be drawn from other ‘offline’ constellations. In the case of *Ominayak v. Canada*,<sup>1032</sup> for example, it was argued that the survival of the Lubicon Lake Band people depended upon their connection to the land, which was integrally connected to their culture. Because of this integral connection between land and culture, Article 27 of the ICCPR was deemed infringed by the Canadian government having allowed the provincial government of Alberta to grant leases for oil and gas exploration on lands belonging to the Lubicon Lake Band. A similar argument could be made in a situation where a State denies members of a cultural group the ability to identify themselves in the online environment using a geographic domain name or string.

In summary, there is no general right to culture that universally and in all cases supports a corresponding right of members of cultural groups to control or make use of a geographic name. Such a right does exist, but is limited to members of a cultural group in which a geographic name is integral. Nevertheless, the existence of this right serves to refute the exclusivity of rights claimed by States in geographic names. It also places restrictions on State decision-making respecting the use of geographic names by others.

### 9.2.3.3 Promoting Cultural Diversity

Beyond the individual’s right to participate in culture, there is also increasing emphasis in international legal discourse on humanity’s interest in cultural diversity.<sup>1033</sup> These interests have not yet developed into norms that recognize rights to culture, however. UNESCO’s Convention on the Protection and Promotion of Cultural Diversity of Cultural Expressions (the ‘UNESCO Convention’) is the most prominent example: it does not create rights respecting culture or cultural diversity. The obligations set out in that convention are not absolute, being articulated in the following terms: in Article 6, ‘each Party *may* adopt measures aimed at protecting and promoting the diversity of cultural expressions within its territory’ (emphasis added) and

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*and promotion of traditional cultural expressions, in Intellectual Property and Traditional Cultural Expressions in a Digital Environment* 205-236 (Christoph Beat Graber & Mira Burri-Nenova eds., Edward Elgar 2008).

1032. *Ominayak, Chief of the Lubicon Lake Band v. Canada*, Communication No. 267/1984, Report of the Human Rights Committee U.N. GOAR, 45th Sess., Supp. No. 40, Vol. 2, at 1, U.N. Doc. A/45/40, Annex 9(A) (1990).

1033. See for example, Cottier, *The Agreement on Trade-Related Aspects of Intellectual Property Rights*, 170; Fodella, *International Law and the Diversity of Indigenous Peoples; Accommodating cultural diversity* (Stephen Tierney ed., Ashgate 2007); *Cultural Diversity, Heritage and Human Rights: Intersections in theory and practice* (Michele Langfield et al. eds., Routledge 2010).

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in Article 7, ‘shall endeavour to create in their territory an environment which encourages individuals and social groups’ (emphasis added). This has no bearing on the existence or exclusivity of State rights in geographic names, but the UNESCO Convention is nevertheless indirectly relevant to DNS policy on geographic names.

Geographic names per se are not inherently an element of cultural diversity,<sup>1034</sup> but their use in the context of the DNS has tremendous potential in terms of facilitating cultural diversity by providing a channel for the creation and dissemination of cultural expression. States party to the UNESCO Convention are not specifically obliged to enact measures respecting domain names in order to promote or preserve cultural diversity. The UNESCO Convention does recognize that in making decisions to promote or protect cultural diversity, States may have to prioritize conflicting interests. This is critical in the context of competing claims arising from the exercise of cultural rights, the possibility of which is not sufficiently acknowledged or addressed by other multilateral treaties respecting the right to culture, including the ICCPR and the ICESCR.

Prioritization of conflicting cultural interests is, understandably, entirely avoided by ICANN in the *gTLD Applicant Guidebook*. The rough guidance offered by the Convention on the Protection and Promotion of Cultural Diversity of Cultural Expressions as to how such competing claims might be addressed could nevertheless be useful to identifying the considerations that should be borne in mind in the resolution of disputes involving culturally significant gTLD strings.

#### **9.2.3.4 Cultural Property**

Another growing area of discourse in the area of cultural rights relates to cultural property.<sup>1035</sup> The notion of culture as property is largely based upon

1034. The term ‘cultural diversity’ is defined in Art. 4(1) of the UNESCO Convention as ‘the manifold ways in which the cultures of groups and societies find expression. These expressions are passed on within and among groups and societies. ... [It] is made manifest not only through the varied ways in which the cultural heritage of humanity is expressed, augmented and transmitted through the variety of cultural expressions, but also through diverse modes of artistic creation, production, dissemination, distribution and enjoyment, whatever the means and technologies used’.

1035. See generally, John Henry Merryman, *Two Ways of Thinking About Cultural Property*, 80(4) *Am. J. Int’l L.* 831 (1986); Lyndel V. Prot, *Problems of Private International Law for the Protection of the Cultural Heritage*, 217 *Recueil des Cours de l’Academie de la Haye* 301 (1989); Fiona Macmillan, *Human rights, cultural property and intellectual property: three concepts in search of a relationship*, in *Intellectual Property and Traditional Cultural Expressions in a Digital Environment* (Christoph Beat Graber & Mira Burri-Nenova eds., Edward Elgar 2008); Jürgen Bröhmer & Jennifer Greaney, *Der Schutz der Kulturgüter der australischen Ureinwohner, in Verfassung – Völkerrecht – Kulturgüterschutz* (Michaela Wittinger, Rudolf Wendt & Georg Röss eds., Duncker & Humblot 2011).

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Western intellectual property doctrines, but at the same time also awkwardly depends on the application of those doctrines to ‘cross-cultural claims that cannot be addressed solely by reference to values that have traditionally been embedded within the legal commentaries on property.’<sup>1036</sup> While the use of the term ‘property’ in this discourse unmistakably ‘implies control in the form of an ability to alienate, exploit and exclude others’<sup>1037</sup> as possessed by a single individual, the added cultural element implies a different rationale for this protection than pure commercial interest. Thus cultural property differs from other forms of property in significant ways:

first, that it is ‘owned’ in common or, at least, publicly; secondly, that the ownership rights focus on preservation, access and the sharing of benefits associated with it; and thirdly, that the role of cultural property rights is to prevent or limit the privatization of cultural property.<sup>1038</sup>

Discussion of legal protection for cultural property diverges into two broad themes: protection of ‘cultural expressions’ and protection of ‘traditional knowledge’. For neither of these terms is there an agreed definition and likewise for neither is there yet an agreed legal protection framework. These concepts are nevertheless arguably the principal focus of today’s international intellectual property law development efforts. The volume of scholarship on cultural expressions and traditional knowledge means that an examination of whether either of these encompasses a particular subject matter such as geographic names constitutes a study unto itself. Such a detailed enquiry lies outside of the scope of this work, but the considerable recent effort expended at the international level in the contexts of human rights, international trade law<sup>1039</sup> and intellectual property law<sup>1040</sup> demands that the potential of cultural expressions and traditional knowledge as

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1036. Tatiana Flessas, *Cultural Property Defined, and Redefined as Nietzschean Aphorism*, 24 *Cardozo L. Rev.* 1067, 1068 n. 3 (2003), quoted in *The Resolution of Cultural Property Disputes: Some Issues of Definition* 55 (Kathryn Last ed., Kluwer Law International 2004).

1037. *The Resolution of Cultural Property Disputes* 55 (Kathryn Last ed.).

1038. Macmillan, *Human rights, cultural property and intellectual property*, 91.

1039. The scope for protecting cultural property in international trade law beyond the narrow issue of geographical indications (which is discussed later in this chapter in the context of traditional knowledge) is being considered, but as the UN Sub-Commission for the Protection and Promotion of Human Rights resolution on ‘Intellectual Property and Human Rights’ warns, it is necessary to be aware of ‘actual or potential conflicts that exist between the implementation of TRIPS and the realization of economic, social and cultural rights.’ United Nations Sub-Commission on Human Rights, *Resolution 2000/7: Intellectual Property Rights and Human Rights*, U.N. Doc. E/CN.4/SUB.2/RES/2000/7 (2000). For detailed discussion on this issue, see for example, Pamela Samuelson, *Implications of the Agreement on Trade Related Aspects of Intellectual Property Rights for Cultural Dimensions of National Copyright Laws*, 23(1-2) *J. Cult. Econ.* 95 (1999); John Henry Merryman, *Cultural Property, International Trade and Human Rights*, 19 *Cardozo Arts & Ent. L.J.* 51 (2001); Cottier, *The Agreement on Trade-Related Aspects of*

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existing or future sources of rights in geographic names be raised here for later, thorough consideration.

#### 9.2.3.4.1 Geographic Names as Cultural Expressions

The term ‘cultural expression’ has been encountered in earlier sections of this chapter in the context of the human right to culture and the promotion of cultural diversity. There, it was noted that the UNESCO Convention creates no binding obligations on State parties with respect to cultural expressions, which are defined in Article 4(3) as ‘those expressions that result from the creativity of individuals, groups and societies, and that have cultural content.’ What the UNESCO Convention does is acknowledge the role that cultural expressions play in society and, controversially, the ‘complementarity of economic and cultural aspects of development’.<sup>1041</sup> With these things in mind, the UNESCO Convention offers States guidance on the implementation of measures aimed at promoting and protecting the diversity of cultural expressions.

The World Intellectual Property Organization takes a different approach, focusing instead on intellectual property law frameworks. In June 2011, its Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (the ‘Intergovernmental Committee’) released draft articles on the protection of ‘traditional cultural expressions’ (or ‘TCEs’, as they are also known).<sup>1042</sup> In draft alternative forms,<sup>1043</sup> the articles propose to define the subject matter of protection using key intellectual property (of which in particular copyright) terminology.

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*Intellectual Property Rights*; Fiona Macmillan, *Copyright, the World Trade Organization and Cultural Self-Determination*, in *New Directions in Copyright Law* (Fiona Macmillan ed., Edward Elgar 2007).

1040. See for example, Cottier & Panizzon, *Legal Perspectives on Traditional Knowledge*; Peter K. Yu, *Intellectual Property and Human Rights in the Nonmultilateral Era*, 64 Fla. L. Rev. 1045, 1072 (2012).

1041. Convention on the Protection and Promotion of the Diversity of Cultural Expressions, Art. 2(5).

1042. WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, *Initial Draft Report*, WIPO Doc. WIPO/GRTKF/IC/18/11 Prov. (2011) (available at [http://www.wipo.int/edocs/mdocs/tk/en/wipo\\_grtkf\\_ic\\_19/wipo\\_grtkf\\_ic\\_19\\_ref\\_grtkf\\_18\\_11\\_prov.pdf](http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_19/wipo_grtkf_ic_19_ref_grtkf_18_11_prov.pdf)).

1043. WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, *The Protection of Traditional Cultural Expressions: Draft Articles*, WIPO Doc. WIPO/GRTKF/IC/22/4 (2012) (available at [http://www.wipo.int/edocs/mdocs/tk/en/wipo\\_grtkf\\_ic\\_22/wipo\\_grtkf\\_ic\\_22\\_4.pdf](http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_22/wipo_grtkf_ic_22_4.pdf)). See also WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, *Like-Minded Countries Contribution to the Draft Articles on the Protection of Traditional Cultural Expressions*, WIPO Doc. WIPO/GRTKF/IC/22/5 (2012) (available at [http://www.wipo.int/edocs/mdocs/tk/en/wipo\\_grtkf\\_ic\\_22/wipo\\_grtkf\\_ic\\_22\\_5.pdf](http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_22/wipo_grtkf_ic_22_5.pdf)).

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The protection envisaged by draft Article 3 is, in both proposed options, likewise broadly reliant upon intellectual property terminology. On the other hand, the ‘Glossary of Key Terms Related to Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions’ updated and published by the Secretariat in early 2012<sup>1044</sup> evidences the need to extend beyond intellectual property in understanding these culture-based concepts. A more significant difference between the UNESCO Convention and the WIPO Draft Articles than terminology is the fact that the latter creates rights and clear obligations respecting cultural expressions, whilst the former does not.

Both instruments attribute a relatively wide scope of subject matter as falling within ‘cultural expressions’, but they do so using different approaches, with UNESCO focusing on cultural content and WIPO focusing on the form of expression. This is a direct result of differing motivations of human rights law and intellectual property law. Despite these differences, an argument can be made that geographic names fall within the scope of the protected subject matters of both of these instruments. WIPO’s Draft Articles are the most clearly applicable given their express inclusion in sub-paragraph (a) of ‘names’ as covered subject matter. Falling within the UNESCO Convention’s definition of ‘cultural expression’, on the other hand, depends on a name’s having such a strong link to a culture that it can be considered ‘cultural content’. The requirement that protected subject matter ‘result from the creativity of individuals, groups and societies’ may prove an obstacle to geographic names’ protection given that they are often inspired by historic, geographic or other features rather than being the product of human creativity. In this geographic names differ from things that would typically be characterized as creative cultural expressions, such as music, dance, stories and artworks.

Even if geographic names fall within either of these definitions of cultural expressions, no binding obligations have as-yet been created for their protection. Surveys conducted as part of WIPO’s Cultural Heritage Project<sup>1045</sup> evidence the fact that protection of TCEs is at this stage still a work in progress even at the domestic level. Work within WIPO’s Intergovernmental Committee to finalize the Draft Articles is ongoing and appears to be making progress. This is an area of high potential for the recognition of rights in geographic names in the (perhaps even near) future, but not currently a source of legal rights in geographic names under international law.

1044. WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, *Glossary of Key Terms Related to Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions*, WIPO Doc. WIPO/GRTKF/IC/22/INF/8 (2012) (available at [http://www.wipo.int/edocs/mdocs/tk/en/wipo\\_grtkf\\_ic\\_22/wipo\\_grtkf\\_ic\\_22\\_4.pdf](http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_22/wipo_grtkf_ic_22_4.pdf)).

1045. WIPO, *Creative Heritage Project: Surveys of Existing Practices, Protocols and Policies*, <http://www.wipo.int/tk/en/culturalheritage/surveys.html> (accessed 15 Oct. 2012).

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9.2.3.4.2 *Geographic Names as Traditional Knowledge*

While the term ‘cultural expression’ tends to focus upon the results of creativity (the *what* of culture), the term ‘traditional knowledge’ tends to focus upon creative energies themselves (the *how* of culture). Though it too lacks an agreed definition, ‘traditional knowledge’ is broadly understood as something of value to a community because of its production and use by that community often (though not necessarily) over a lengthy period of time.<sup>1046</sup> It is also frequently associated with the relationship between people and the environment in which they live. Accordingly, traditional knowledge may include knowledge of ‘plants and animals and their properties; minerals and soils and their properties; combinations of organic and inorganic matters; processes and technologies; means of enhancing individual health and welfare; means of enhancing collective health and welfare; [and] artistic expressions.’<sup>1047</sup> The medicines, healing practices, religious ceremonies, handicrafts and other ways of life that are derived from this knowledge are valuable to the communities that develop and use them in terms of the community’s continued ability to survive and thrive, but they may also have commercial value to outsiders. The incidence of outsiders appropriating and using traditional knowledge, particularly when this occurs without compensation, has given rise to interest in its protection.

The potential subject matter of traditional knowledge covers a broad range of activities. This is reflected in the variety of participants involved in efforts to protect it at the international level, including the World Intellectual Property Organization, the World Trade Organization, the United Nations’ Food and Agriculture Organization, the United Nations Conference on Trade and Development, the United Nations Educational, Scientific and Cultural Organization, and the World Health Organization.<sup>1048</sup> There are not yet any multilateral conventions of global force that specifically protect ‘traditional knowledge’ as a discrete subject matter, though the Convention on Biological Diversity<sup>1049</sup> represents a significant step forward for the protection of the biological resources upon which many forms of traditional knowledge are based.

1046. See Antony Taubman & Matthias Leistner, *Analysis of Different Areas of Indigenous Resources: Traditional Knowledge*, in *Indigenous Heritage and Intellectual Property, Genetic Resources, Traditional Knowledge and Folklore* 59-60 (Silke von Lewinski ed., Kluwer Law International 2008).

1047. Bernard O’Connor, *Protecting Traditional Knowledge. An Overview of a Developing Area of Intellectual Property Law*, 6(5) *J. World Intell. Prop.* 677, 677-678 (2005). See also Thomas Cottier, *The Protection of Genetic Resources and Traditional Knowledge: Toward More Specific Rights and Obligations in World Trade Law*, 1 *J. Int’l Econ. L.* 555 (1998).

1048. See Cottier & Panizzon, *Legal Perspectives on Traditional Knowledge*.

1049. Convention on Biological Diversity (5 Jun. 1992, entered into force 29 Dec. 1993) 1760 U.N.T.S. 79; 31 I.L.M. 818.

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In conjunction with its work on protecting traditional cultural expressions, WIPO's Intergovernmental Committee is also currently engaged in efforts to protect traditional knowledge, though it has been said that international protection of TCEs is more 'mature'.<sup>1050</sup> Draft articles on the protection of traditional knowledge<sup>1051</sup> are under development, and similar to the draft articles on traditional cultural expressions, the definition of 'traditional knowledge',<sup>1052</sup> eligibility criteria (draft Article 1) and the scope of protection (draft Article 3) are at this stage drafted in optional forms.

Meanwhile, regional frameworks for the protection of traditional knowledge are also gaining ground, the most notable of which being the African Regional Intellectual Property Organization (ARIPO) Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore (the 'Swakopmund Protocol').<sup>1053</sup> Although not yet in force,<sup>1054</sup> the Swakopmund Protocol is instructive in terms of its broad but relatively concise definition of 'traditional knowledge',<sup>1055</sup> and detailed criteria<sup>1056</sup> of

1050. WIPO, *A new dawn for custodians of TK in Africa*, WIPO Magazine (December 2010) (available at [http://www.wipo.int/wipo\\_magazine/en/2010/06/article\\_0008.html](http://www.wipo.int/wipo_magazine/en/2010/06/article_0008.html)).

1051. WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, *The Protection of Traditional Knowledge: Draft Articles*, WIPO Doc. WIPO/GRTKF/IC/21/4 (2012) (available at [http://www.wipo.int/edocs/mdocs/tk/en/wipo\\_grtkf\\_ic\\_21/wipo\\_grtkf\\_ic\\_21\\_4.pdf](http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_21/wipo_grtkf_ic_21_4.pdf)); WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, *Traditional Knowledge and Folklore, Like-Minded Countries Contribution to the Draft Articles on the Protection of Traditional Knowledge*, WIPO Doc. WIPO/GRTKF/IC/21/5 (2012) (available at [http://www.wipo.int/edocs/mdocs/tk/en/wipo\\_grtkf\\_ic\\_21/wipo\\_grtkf\\_ic\\_21\\_5.pdf](http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_21/wipo_grtkf_ic_21_5.pdf)).

1052. Option 1: For the purposes of this instrument, the term 'traditional knowledge' refers to the know-how, skills, innovations, practices, teachings and learning, resulting from intellectual activity and developed within a traditional context.

Option 2: Traditional knowledge is knowledge that is dynamic and evolving, resulting from intellectual activities which is passed on from generation to generation and includes but is not limited to know-how, skills, innovations, practices, processes and learning and teaching, that subsist in codified, oral or other forms of knowledge systems. Traditional knowledge also includes knowledge that is associated with biodiversity, traditional lifestyles and natural resources.

WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, *Traditional Knowledge and Folklore, The Protection of Traditional Knowledge: Draft Articles*, Art. 1.

1053. Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore (9 Aug. 2010, not in force).

1054. The Swakopmund Protocol was signed by nine ARIPO Member States: Botswana, Ghana, Kenya, Lesotho, Liberia, Mozambique, Namibia, Zambia and Zimbabwe. Pursuant to section 27, the Protocol will enter into force three months after six Member States have deposited instruments of ratification or accession.

1055. Swakopmund Protocol, Art. 2.1: "'traditional knowledge" shall refer to any knowledge originating from a local or traditional community that is the result of intellectual activity and insight in a traditional context, including know-how, skills, innovations, practices and learning, where the knowledge is embodied in the traditional lifestyle of a community, or contained in the codified knowledge systems passed on from one

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protectability which directly link knowledge to a particular community and its cultural identity.

Names are notably not expressly included in the definition of ‘traditional knowledge’ in the Swakopmund Protocol or in either of the definitional options in WIPO’s Draft Articles on the Protection of Traditional Knowledge. It is questionable whether a geographic name could be interpreted to implicitly fall within the sorts of knowledge protected under either, given that they focus on how knowledge is generated rather than the form of its expression.

Even if a connection cannot be drawn between traditional knowledge and geographic names as a general matter, such a connection can potentially be drawn between traditional knowledge and products identified by geographical indications.<sup>1057</sup> This is because geographical indications implicitly represent the *how* element that geographic names more broadly do not. Those who support the recognition and protection of geographical indications recognize that the aim of their protection goes beyond the mere name to ‘protection of a certain quality and reputation that is attributable to a product that is made in a defined place.’<sup>1058</sup> This quality and reputation is frequently derived not only from particular characteristics of the geographical territory from which a product originates, but from the human interaction with that territory and the knowledge employed to transform elements in their natural state into distinctive products.<sup>1059</sup>

It has been shown in Chapter 7 that the international intellectual property law framework offers only limited protection to geographical indications against unauthorized use. Geographical indications as presently recognized thus have little capacity to protect the cultural aspects that inhere in them. Specifically, geographical indications are considered not to possess:

the independent capacity to protect local cultures of production, consumption or identity, or to prevent the erosion of cultural diversity. Market forces inevitably induce changes in local production methods and consumption preferences, in spite of the GIs that should, in theory, play a role in preserving them, and the proliferation of GIs has itself

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generation to another. The term shall not be limited to a specific technical field, and may include agricultural, environmental or medical knowledge, and knowledge associated with genetic resources.’

1056. Swakopmund Protocol, Art. 4.

1057. See Cottier & Panizzon, *Legal Perspectives on Traditional Knowledge*.

1058. O’Connor, *The law of geographical indications*, 18. See also Conrad, 13.

1059. See Dev Gangjee, *Melton Mowbray and the GI Pie in the Sky: Exploring cartographies of protection*, 2006(3) *Intell. Prop. Q.* 291, 300-308 (2006) (discussing ‘the link between product and place’). See also Stephen R. Munzer & Phyllis Chen Simon, *Territory, Plants, and Land-Use Rights among the San of Southern Africa: A Case Study in Regional Biodiversity, Traditional Knowledge, and Intellectual Property*, 17 *Wm. & Mary Bill Rts J.* 831 (2009).

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diluted the claims of special reputation, typicity, and cultural identity of GI-endowed locales.<sup>1060</sup>

Traditional knowledge protection has been proposed as a means of addressing these inadequacies and facilitating the protection of both a geographical indication as such and the cultural knowledge it represents.<sup>1061</sup> This is an interesting future possibility, but the scope that traditional knowledge protection currently offers for recognizing rights in geographic names (of which geographical indications in particular) is only speculative. Taking guidance from the Swakopmund Protocol, geographic names are not expressly provided for and a plain reading of the definition and eligibility criteria of ‘traditional knowledge’ renders it unlikely that these will be interpreted to implicitly geographic names.

#### 9.2.4 Right to Language

Closely linked to the right to culture is the right to language. Culture and language are symbiotic aspects of life; many forms of cultural expression use language, and the words that comprise languages are constantly evolving and being drawn from speakers’ cultural interactions and experiences. This is not unique to modern civilization; the German writer Johann Wolfgang von Goethe observed the following of late eighteenth century life: ‘So unübersetzlich sind die Eigenheiten jeder Sprache; denn vom höchsten bis zum tiefsten Wort bezieht sich alles auf Eigentümlichkeiten der Nation, es sei nun in Charakter, Gesinnungen oder Zuständen.’ [‘It is impossible to translate the idiosyncrasies of each language; every word, from the most arcane down to the simplest, is permeated by the particular nature of the nation, be it in character, outlook or circumstances.’]<sup>1062</sup>

Modern technologies seem to be moving human societies away from such culturally and nationally distinct languages, however. The ease and affordability of global cultural dissemination via the internet contributes to the growing trend of linguistic homogenization, and it has been estimated that as much as ‘95 per cent of the languages today will have no long-term prospects of survival’.<sup>1063</sup> The death of languages is linked to the death of

1060. Broude, 678. See also Rhonda Chesmond, *Protection or Privatisation of Culture? The cultural dimension of the international intellectual property debate on geographical indications of origin*, 29(9) Eur. Intell. Prop. Rev. 379 (2007).

1061. See Cottier & Panizzon, *Traditional Knowledge and Geographical Indications*; Olufunmilayo B. Arewa, *TRIPS and Traditional Knowledge: Local Communities, Local Knowledge, and Global Intellectual Property Frameworks*, 10 Marquette Intell. Prop. L. Rev. 155 (2006); Gervais, 130-140.

1062. Johann Wolfgang von Goethe, *Italienische Reise 1786-1788 Teil 1* (Den 5. Oktober, nachts), 80 (Hirmer Verlag 1961) (trans. Dinah Cannell in Konrad Schröder, *Languages, in What is Europe? Aspects of European Cultural Diversity* 13 (Monica Shelley & Margaret Winck eds., Routledge 1995).

1063. Schröder, *Languages*, 14.

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cultures, and this is generally viewed as undesirable.<sup>1064</sup> Paradoxically, the internet may have just as much of a role to play in reversing this trend as it has had in its creation by helping waning linguistic communities to overcome challenges to communication such as geographical isolation, unsupportive government language policies and political conflict. One step in this direction is ICANN's introduction in 2010 of 'Internationalized Domain Names' (IDNs), enabling domain names to be represented in non-Latin scripts.<sup>1065</sup> The introduction of IDN new gTLDs promises even greater possibilities for linguistic communities to promote, preserve and develop their language in the online world.<sup>1066</sup>

It is not surprising that much of the discussion surrounding human rights and language takes place within the context of minority rights. As is the case with cultural rights, it can be argued that the majority is sufficiently well equipped to protect its linguistic interests, but that its doing so puts the continued existence of minority languages at risk. Article 27 of the ICCPR is clearly relevant given its recognition of the right of persons of 'ethnic, religious or linguistic' minority groups to, *inter alia*, 'use their own language'. Article 30 of the International Convention on the Rights of the Child additionally recognizes the right of a child belonging to a minority or indigenous group to 'use his or her own language'. These are, however, the only instruments of global effect to specifically recognize a right to language.

To clarify, the Charter of the United Nations recognizes at Article 1(3) a right of non-discrimination on the basis of language, as do Articles 2(1) of the ICCPR and 2(2) of the ICESCR, but this is not axiomatically subject to interpretation as a right *to* language. The Committee on the Elimination of Discrimination has recommended that States' obligations to prevent discrimination be interpreted as ensuring 'that indigenous communities can exercise their rights to practise and revitalize their cultural traditions and customs and to preserve and to practise their languages',<sup>1067</sup> but even this is not expressly a right to language. Nor does the additional protection offered to indigenous people and minorities by Articles 27 and 30 of the ICCPR and International Convention on the Rights of the Child, respectively, expressly recognize a right to language. Rather, protection in both of these instruments is articulated in terms of a right to *use* or *practice* a language, similar to the way in which the right *to participate in* culture is recognized in the ICESCR

1064. See for example, Gerrand, *Cultural diversity in cyberspace*.

1065. On Internationalized Domain Names (IDNs), see Part I, Chapter 1, section 1.2.2.3 above.

1066. IDN strings comprised 6%, or 116 of 1,930, of applied-for strings in the first round of the New gTLD Program. ICANN, *New Generic Top-Level Domains: Quick Facts about applied-for new gTLD strings*, <http://newgtlds.icann.org/en/program-status/statistics/applications-quick-facts-13jun12-en.pdf> (13 Jun. 2012, accessed 15 Oct. 2012).

1067. United Nations Committee on the Elimination of Racial Discrimination, General Recommendation No. 23: Indigenous Peoples (1997) (available at [http://www.unhcr.ch/tbs/doc.nsf/%28Symbol%29/73984290dfea022b802565160056fe1c?Opendocument#\\*\\*%2](http://www.unhcr.ch/tbs/doc.nsf/%28Symbol%29/73984290dfea022b802565160056fe1c?Opendocument#**%2)).

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rather than a right *to* culture. The analysis of the right under Article 15 of the ICESCR ‘to take part in the cultural life of the community’ cited earlier in this chapter is aptly recalled here; borrowing those words, the right to use a language logically ‘can only exist if there is a’<sup>1068</sup> language. This statement seems sensible in the context of the right to language, but nevertheless lacks support in international law in the way that the right to culture is supported through Article 15(2) of the ICESCR, which requires States to take steps necessary for culture’s conservation and development. In spite of this, it is posited that:

normative expectations converge at least to the extent that states feel an obligation to provide *some* affirmative support for the use of indigenous languages and to ensure that indigenous people do not suffer discrimination for failure to speak the dominant language of the state in which they live.<sup>1069</sup>

The scope for a broader right of indigenous peoples to language is supported by the Declaration on the Rights of Indigenous Peoples, Article 13(1) of which is of particular relevance here. It provides: ‘Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, **and to designate and retain their own names for communities, places and persons**’ (emphasis added). The Declaration on the Rights of Indigenous Peoples is not binding and thus not a formal source of rights in geographic names, but the language just emphasized suggests at a minimum that there is some recognition at the international level of the importance of geographic names to indigenous peoples. Otherwise, nothing in the ongoing discourse on legal rights in geographic names suggests that there is currently a custom or general principle of recognizing this right of indigenous peoples to ‘retain their own names for communities [and] places’.

Recognition of the human right to language in international law thus appears to be limited to particular segments of the human population and the particular context of preventing discrimination. While there are regional agreements that provide for rights respecting language,<sup>1070</sup> these are also limited to the non-discrimination context and do not create specific rights to language that might support a correlative right to use or control a geographic name. Nor has support for a right to language been found outside of human rights law in the area of international trade law.<sup>1071</sup>

1068. McGoldrick, 454. See discussion above at section 9.2.3.2.

1069. Anaya, *Indigenous Peoples in International Law*, 139 (internal citations omitted).

1070. For example, the European Convention on Human Rights recognizes at Art. 14 a right to non-discrimination on the basis of language. Convention for the Protection of Human Rights and Fundamental Freedoms (4 Nov. 1950, entered into force 3 Sep. 1953) E.T.S. 5; 213 U.N.T.S. 221.

1071. See Broude, 682 (concluding that the potential for using trade-restrictive measures to preserve language, ‘a national treasure of sorts,’ under GATT Art. XX(f) is very low).

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Against this backdrop it must be considered whether actions of the State that have the effect of preventing a particular linguistic community from having an online identity in the form of a geographic internet top-level domain could be interpreted as discrimination on the basis of language. In cases in which language and geographic territory share a name, a restriction on the linguistic community's application for that domain name or string could plausibly constitute discrimination by preventing that community from expressing itself on the internet. On the other hand, a policy of State control of geographic names would not be discriminatory if, for example, domain name registration within gTLDs were open to members of the linguistic community. Further, the policy underpinning the operation of the domain and use of domain names registered within it could not discriminate against in-language content and users. A hypothetical example would be a decision by the government of the United Kingdom to apply for a .cymru gTLD in which domain name registrants are prohibited from registering Welsh-language names or displaying Welsh-language content.<sup>1072</sup>

The human right to language thus appears at present to offer scant support for a right of persons to make use of or exercise control over geographic names. Application of the right to language is limited to preventing State actions that discriminate on the basis of language. Preventing a linguistic community's access to the internet could in certain circumstances constitute a breach of this right. It does not automatically follow, however, that the recognition of exclusive State rights in a geographic domain name is discriminatory. That said, neither does the human right to language prove the existence of an exclusive right of States to geographic names; what it does is obligate States using geographic names not to do so in ways that discriminate against linguistic communities.

#### 9.2.5 RIGHT TO PROPERTY

Several forms of property have been explored in this and earlier chapters as potential bases of rights under international law in geographic names: in the context of human rights, cultural property (including cultural expressions and traditional knowledge), and in the context of intellectual property, trademarks and geographical indications. These regimes protect exclusive individual – and to a lesser extent collective – rights to property in a particular form or satisfying particular criteria. What remains as a final area of enquiry is to consider whether geographic names can be considered as either the

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1072. This example did not eventuate in the actual application process; the .cymru application made by Nominet UK, the registry operator of the United Kingdom's .uk ccTLD, specifically supports 'the registration of internationalized domain names (IDNs) to support the Welsh language'. See ICANN, *Application Details, String: CYMRU*, Question 23, <http://gtdresult.icann.org/application-result/applicationstatus/application-details/1420> (accessed 15 Oct. 2012).

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property of individuals or, alternatively, belonging to all humankind. The starting point in answering these questions is the recognition in international law of an individual's right to property and its potential applicability to geographic names. This then leads to a discussion of the notion of public property, what was termed '*res publicae*' in Roman law. Lastly, it is shown that these historic notions of property remain a feature of contemporary legal frameworks, appearing in the intellectual property context in the concept of the public domain.

**9.2.5.1 The Human Right to Property and Individuals' Rights in Geographic Names**

A human right to property remains elusive and indefinite in international law. It is recognized most clearly in the non-binding United Nations Declaration on Human Rights, Article 17 of which provides:

- (1) Everyone has the right to own property alone as well as in association with others.
- (2) No one shall be arbitrarily deprived of his property.

A right to property is not provided for in either the ICCPR or the ICESCR, though both address property in the context of non-discrimination.<sup>1073</sup> 'There is reason to believe, however, that it was the precise formulation of the contours of the right to property, rather than disagreement over its existence in some form, that proved the stumbling block (and even then, only narrowly so).'<sup>1074</sup> This is supported by the express recognition of a right to property in regional agreements, amongst which the European Convention on Human Rights,<sup>1075</sup> the African Charter on Human and Peoples Rights<sup>1076</sup> and the

1073. See International Covenant on Civil and Political Rights, Arts. 2(1), 24(1) and 26(1); International Covenant on Economic, Social and Cultural Rights, Art. 2(2).

1074. Francisco Forrest Martin et al., *International Human Rights Law and Practice: Cases, Treaties and Materials* 868-869 (Kluwer Law International 1997) citing William A. Schabas, *The Omission of the Right to Property in the International Covenants*, 4 Hague Y.B. Int'l L. 135 (1991).

1075. Art. 1 of the Optional Protocol to the Convention provides:  
Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.  
The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

1076. African Charter on Human and Peoples' Rights, Art. 14 (27 Jun. 1981, entered into force 21 Oct. 1986) O.A.U. Doc. CAB/LEG/67/3 Rev 5, discussed in Mashood A. Baderin, *The African Commission on Human and Peoples' Rights and the Implementation of Economic, Social and Cultural Rights in Africa*, in *Economic, Social and Cultural Rights in Action* 151-153 (Mashood A. Baderin & Robert McCorquodale eds., Oxford University Press 2007).

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American Convention on Human Rights.<sup>1077</sup> Further support for the existence of a right to property can be derived from the non-binding United Nations General Assembly Resolution on Respect for the Right of Everyone to Own Property Alone as Well as in Association with Others and Its Contribution to the Economic and Social Development of Member States.<sup>1078</sup>

Although it may broadly (even if not universally) be agreed that a human right to property exists in some form in international law, there is disagreement as to the precise substance of the right and limitations to it.<sup>1079</sup> This is less problematic in the regional instruments just noted. Article 17(2) of the European Charter on the Fundamental Rights of the European Union,<sup>1080</sup> for example, specifically states: 'Intellectual property shall be protected.' The European Convention on Human Rights is another example; although a right to property is not expressly provided for, analysis shows that protection of intellectual property, including trademarks, bears out in cases.<sup>1081</sup>

The most common and general aspect of the right to property at the international level is its protection of individuals 'against wrongful state action'.<sup>1082</sup> Whether protection against arbitrary and uncompensated taking of property is the only protection offered by an international law-based right to property is unclear but possible. Related arguments may be made to the effect that a taking constitutes a violation of the TRIPS Agreement's guarantees of protection to trademarks and geographical indications.<sup>1083</sup> Another broader possibility that is philosophically supported by the belief that property rights are directly linked to economic prosperity<sup>1084</sup> is its encompassing a positive right to acquire and possess at least *some* property. Even this broader view does not extend so far as to justifying claims to

1077. American Convention on Human Rights, Art. 21 (22 Nov. 1969, entered into force 17 Jul. 1978) 1144 U.N.T.S. 123.

1078. *Respect for the right of everyone to own property alone as well as in association with others and its contribution to the economic and social development of Member States*, 14 Dec. 1990, United Nations General Assembly Doc. A/RES/45/98.

1079. See *Restatement (Third) of the Foreign Relations Law of the United States* §711 comment d.

1080. Charter of Fundamental Rights of the European Union, OJ 2000/C 364/01.

1081. See Goebel, 7.

1082. Forrest Martin et al., *International Human Rights Law and Practice*, 866.

1083. See for example, *Australia – Certain Measures Concerning Trademarks and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging*, WT/DS434/1; *Australia – Certain Measures Concerning Trademarks, Geographical Indications and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging*, WT/DS435/1; *Australia – Certain Measures Concerning Trademarks and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging*, WT/DS441/1.

1084. *Ibid.*

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acquire or own *particular* property, however. Nor have claims based solely on a right to property been accepted in international courts.<sup>1085</sup>

While there are regional laws that support a right to property as protecting particular property,<sup>1086</sup> international law does not go so far. International law does, however, offer support for the claim that a property right recognized in a geographic name (e.g., as a trademark, geographical indication or as cultural property) cannot arbitrarily be taken away. In the specific context of the New gTLD Program, this should motivate governments to provide clear reasons for denying support of a geographic new gTLD application made by an applicant possessing a geographic trademark or geographical indication.

### 9.2.5.2 Collective Property Rights in Geographic Names

#### 9.2.5.2.1 Geographic Names as Public Property: ‘*Res Publicae*’

Various societies and political ideologies have held to varying degrees the belief that some things in life are the property of the public at large. In law, this has roots in the Roman concept of ‘*res publicae*’, in which public access was ensured by operation of law.<sup>1087</sup> Classic examples of *res publicae* include highways, railways, harbours, ports and bridges. These things ‘are overwhelmingly the physical spaces required for mobility—lanes for travel, transportation, navigation, and communication among distant locations.’<sup>1088</sup> Their desirability to the public and use by all, in addition to their susceptibility to a certain degree of control to ensure their orderly use,<sup>1089</sup> justifies ownership by all.

Taking the view that geographic names are public property starts with a determination that they are property, something that the law has been notably reticent to do at least in the context of their registrability as trademarks.<sup>1090</sup> Article 6*ter* of the Paris Convention is argued to have been

1085. See for example, *L.E.S.K. v. the Netherlands*, U.N. Human Rights Committee, Communication No. 381/1989 U.N. Doc. CCPR/C/45/D381/1989 (1992); *K.J.L. v. Finland*, U.N. Human Rights Committee, Communication No. 544/193 U.N. Doc. CCPR/C/49/D/544/1993 (views adopted by the Human Rights Committee 3 Nov. 1993); *Koné v. Senegal*, U.N. Human Rights Committee, Communication No. 386/1989 U.N. Doc. CCPR/C/52/D/386/1989 (views adopted by the Human Rights Committee 21 Oct. 1994), as cited in Forrest Martin et al., *International Human Rights Law and Practice*, 875.

1086. See Goebel, 7.

1087. See Carol M. Rose, *Romans, Roads, and Romantic Creators: Traditions of public property in the information age*, 66 *L. & Contemp. Probs.* 89 (2003).

1088. *Ibid.*, 97.

1089. *Ibid.*, 99.

1090. See discussion of geographical names’ protectability as a trademark in Part III, Chapter 5, section 5.1.1 above.

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motivated by national emblems' incapability of propertization.<sup>1091</sup> Debates surrounding the protection of cultural expressions, traditional knowledge and biological resources centre on the appropriateness of propertization.<sup>1092</sup> It is also said that '[f]rom an indigenous perspective, a song or story is not a commodity or a form of property but "one of the manifestations of an ancient and continuing relationship between people and their territory".'<sup>1093</sup> Nor are plants and animals, healing methods, or ways of life easily characterized as property.

Characterizations of the internet and its DNS as *res publicae*<sup>1094</sup> should be scrutinized. It would be difficult if not impossible to maintain a *res publicae* space in the current environment of natural monopoly that results from the technical rule of absolute name uniqueness. The proviso that the public must be willing to 'behave in an orderly fashion'<sup>1095</sup> in a *res publicae* space requires an absolute willingness on the part of unsuccessful gTLD applicants to relinquish aspirations of extending offline rights into the online environment.

Even if the communications network underpinning the internet is deemed public property, this does not mean that all of the traffic and content upon it is also public property. Reference can be made back to physical *res publicae* spaces: the use of a public highway or port by privately owned vehicles and ships does not transform those vehicles and ships into public property. Likewise, if the internet is considered public property, its use to communicate information does not transform that information into public property. The information may be public property, but if so, this is irrespective of its transmission via the internet. That said, the line between 'lanes and means of communication... [and] the content of communication'<sup>1096</sup> is difficult to draw. This is certainly an issue for domain names because they have a tendency to connote content while also identifying the source of information and its location in the internet.

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1091. See Antony Taubman, *The public domain and international intellectual property law treaties*, in *Intellectual Property: The Many Faces of the Public Domain* 82 (Hector Macqueen & Charlotte Waelde eds., Edward Elgar 2007).

1092. Anupam Chander & Madhavi Sunder, *The Romance of the Public Domain*, 92 Cal. L. Rev. 1331, 1368 (2004).

1093. Wend B. Wendland, *'It's a small world (after all)': some reflections on intellectual property and traditional cultural expressions*, in *Intellectual Property and Traditional Cultural Expressions in a Digital Environment* 150 (Christoph Beat Graber & Mira Burri-Nenova eds., Edward Elgar 2008), quoting Erica-Irene Daes, Special Rapporteur of the (then) Sub-Commission on Prevention of Discrimination and Protection of Minorities and Chair of the Working Group on Indigenous Populations, *Study on the Protection of the Cultural and Intellectual Property of Indigenous Peoples*, E/CN.4/Sub.2/1993/28, 28 Jul. 1993, para. 22.

1094. Rose, 100 (identifying the internet as 'the most obvious example of *res publicae* in Intellectual Space').

1095. *Ibid.*, 99.

1096. *Ibid.*, 104.

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Just as '[p]ublic roads and open systems of transportation make *private* property more valuable'<sup>1097</sup> (emphasis in original), the internet and other modern communications mediums make privately owned names and symbols more valuable, encouraging their commoditization despite the incongruity in some cases of that approach with the beliefs of their creators. As has been shown in earlier sections of this chapter, recent trends in the proprietization of cultural expressions and traditional knowledge tend to follow existing property regimes. In the DNS context, this is consistent with the broad understanding of domain names as property or something conceptually comparable. The existence of these other potential sources of legal rights in geographic names renders it even more remote that they might be considered generally, or in the specific context of the DNS, public property.

9.2.5.2.2 *Geographic Names as Part of the Public Domain*

It is a widely accepted premise of intellectual property law that new creation depends upon the existence of a stock of ideas and expressions that is open and available to all; in some legal systems, this philosophy justifies the very existence of intellectual property laws as temporary means of private proprietization.<sup>1098</sup> The things falling outside of private property rights, whether at the expiry of protection or not protectable in the first place, are considered to be in the 'public domain'. There are three ways of characterizing the public domain: as property belonging to all – the notion of public property just discussed,<sup>1099</sup> as 'res nullius' – the 'property of no one',<sup>1100</sup> or as the 'opposite of property' – something not falling within the characterization of property.<sup>1101</sup>

There is no agreed definition of 'public domain', but there is consistency in terms of its focus on access rather than ownership, as this definition illustrates: 'Resources for which legal rights to access and use for free (or for nominal sums) are held broadly.'<sup>1102</sup> Articulated in this way in terms of access and use, the notion of the public domain is inconsistent with property rights, which confer 'control in the form of an ability to alienate, exploit and exclude others'.<sup>1103</sup> Nevertheless, even access and use can give rise to

1097. Chander & Sunder, 1345.

1098. Hughes, *The Philosophy of Intellectual Property*, 323-325.

1099. See for example, Rose, 100.

1100. See for example, Indigenous World Association and Indigenous Media Network, Joint Statement, *Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, Working Group on Indigenous Populations* (18–22 Jul. 2005).

1101. See for example, James Boyle, *Foreword: The Opposite of Property?*, 66 *L. & Contemp. Probs.* 1 (2003).

1102. Chander & Sunder, 1338.

1103. Last (ed.), *The Resolution of Cultural Property Disputes*, 55.

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feelings that might be mistaken for property, particularly property owned by the State as:

a form of domain defined not merely by the absence of exclusive private rights but by a positive sense of public ownership or collective sovereignty. This is domain as *dominion*: the sense of 'domain' recalled in the concept of 'eminent domain', the sovereign's residual entitlement to assume use of private property for public use, based on a superior form of sovereign dominion over property.<sup>1104</sup>

Intellectual property laws traditionally make a distinction between property and the public domain, subject matter falling into the former category being protected and subject matter falling into the latter category not protected.<sup>1105</sup> This is helpful to achieving a foundational understanding of what the public domain comprises, but it has been argued that it is not appropriate to conclude from this simplified explanation that intellectual property and the public domain are somehow opposed, as if 'the public domain is a bulwark against proprietization and an alternative to intellectual property.'<sup>1106</sup> Rather, there is a cyclic symbiosis between property rights and the public domain, an idea which has as its roots in Lockean 'labour theory': energies are exerted upon ideas and information in the public domain and thus take on the status of private property, which status they relinquish when the term of protection ends.<sup>1107</sup> Falling into the public domain, they become available to others for use in creating new intellectual property. In this way, the public domain is a driver of proprietization 'because it offers a sphere of free works upon which capitalists can draw without either seeking consent or drawing liability.'<sup>1108</sup>

The subject matter in the public domain is not itself appropriable, but can be used to create appropriable subject matter that ultimately joins the stock of non-appropriable subject matter. This is precisely what concerns indigenous communities if cultural heritage is to be considered public domain:

Placing our knowledge into the public domain turns it into a freely available resource for commercial utilization. Thus, it also creates the pre-condition for using non-indigenous Intellectual Property Rights (IPR) regimes to patent 'inventions' based upon our knowledge. ... We therefore strongly reject the application of the public domain concept to

1104. Taubman, *The public domain and international intellectual property law treaties*, 60-61, citing Grotius, *In Hugonis Grotii Jus Belli Et Pacis Commentatio*, De Jure Belli, Book I, iii. §6.

1105. See generally, Jessica Litman, *The Public Domain*, 39 Emory L.J. 965 (1990).

1106. Chander & Sunder, 1343.

1107. On Locke's labour theory and its application in justifying intellectual property rights, see Hughes, *The Philosophy of Intellectual Property*, 296-329.

1108. Chander & Sunder, 1343.

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any aspect that relates to our cultures and identities, including human and other genetic information originating from our lands and waters.<sup>1109</sup>

On the other hand, the non-appropriable nature of the public domain aligns it with the Roman law concept of *res communes*, which ‘encapsulates what might be called the Impossibility Argument against private property: The character of some resources makes them incapable of “capture” or any other act of exclusive appropriation.’<sup>1110</sup> Classic examples of *res communes* are oceans and water; they are needed and used by all, but it is physically impossible to exert exclusive control over them.<sup>1111</sup>

In the non-physical world, languages, alphabets, facts and laws of nature all fit the description of being needed by all and incapable of possession or propertization by individuals.<sup>1112</sup> The symbols protected by Article 6ter have also been considered to fit this description.<sup>1113</sup> These examples highlight the distinction made in Roman law between *res publicae* and *res communes*: *res publicae* are contained spaces over which some degree of control is possible. This distinction has since blurred, and intellectual property law appears to have played a role in that process.<sup>1114</sup>

A characterization of geographic names as falling in the public domain<sup>1115</sup> does not necessarily equate to a ‘right’ of the public to them, however. On the contrary, claims to rights in the public domain lack support because of the very notion of the commons as a non-proprietary environment:

Rather, we all have the *privilege* or *liberty* to do what we like with these works (for example, stage a Shakespeare play); the only corollary is that other persons have *no right* to prevent us from so doing (for example, the direct descendant of William Shakespeare has no right to prevent me staging *Macbeth*).<sup>1116</sup>

Applying this thinking to geographic names, the public may not so much have a right to use a geographic name (suggesting a corresponding duty on the part of others, including the State, not to interfere in that interest) but rather a ‘privilege or liberty’ to use them – as domain names or otherwise –

1109. Indigenous World Association and Indigenous Media Network, *Joint Statement*.

1110. Rose, 93.

1111. *Ibid.*, citing William A. Hunter, *Introduction to Roman Law* 59-60 (9th ed. revised, Oxford University Press 1934).

1112. On traditional knowledge and the public domain, see Cottier & Panizzon, *Legal Perspectives on Traditional Knowledge*, 374-376.

1113. See Taubman, *The public domain and international intellectual property law treaties*, 82.

1114. See Rose, 94-95.

1115. See Rimmer, 131.

1116. Cahir, 39-40.

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within the bounds of other norms surrounding their use such as those established by unfair competition law.<sup>1117</sup>

If they do form part of the public domain, geographic names should be made available for domain name registration by any member of the public. This is not because each member of the public has a legal right to have such a space delegated to their control by ICANN: no one member of the public has a greater claim than another. The ‘first come, first served’ approach to domain name registration reflects this view perfectly, but the perfect application of the public domain to the DNS ends there. In the offline world, things in the public domain are available to all, and their transformative use by one does not prevent transformative use by another. In the online world, multiple simultaneous users of a domain name cannot exist: the technical requirement of absolute name uniqueness means that domain names start out as available to all, but they lose that status once they are delegated (top-level) or registered (second- and lower levels). The plot (e.g., boy meets girl, they fall in love, their love is forbidden by family relations) remains in the public domain for others to use even after *Romeo and Juliet* is written, but a geographic name is effectively removed from the pool of available names when it is delegated to a registry operator or registered by a domain name registrant. There can only be one .africa, one .switzerland, one .paris, and only one kenya.africa, berne.switzerland and one montmartre.paris

In conclusion, although the law does not recognize a right of the public to subject matter in the public domain, when the use at issue takes the form of a domain name, the practical outcome is difficult to distinguish from a legal right. While there is no right to prevent another person from making an application for a geographic gTLD string or domain name comprised of a term falling within the public domain, there is a technological impediment to doing so that gives rise to an exclusive, property-type right once the name has been captured in that way.

### 9.3 GEOGRAPHIC NAMES AS THE COMMON HERITAGE OF MANKIND

The final basis of rights considered in this study is a concept that has its roots in natural resources law, but also has clear links to cultural rights.<sup>1118</sup> It is

1117. See Taubman, *The public domain and international intellectual property law treaties*, 58-59.

1118. See for example, Liu Lina, *Ownership of Underwater Cultural Heritage in the Area*, 1 *Creighton Int'l & Comp. L.J.* 60 (2011); Derek Fincham, *The Distinctiveness of Property and Heritage*, 115 *Penn St. L. Rev.* 641 (2011); Joseph P. Fishman, *Locating the International Interest in Intranational Cultural Property Disputes*, 35 *Yale J. Int'l L.* 3347 (2010); Siegfried Wiessner, *Re-enchanting the world: Indigenous peoples' rights as essential parts of a holistic human rights regime*, 15 *UCLA J. Int'l L. & Foreign Aff.* 239 (2010).

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acknowledged from the outset that this discussion could sit apart from human rights in this book, but it has been purposefully placed here in order to highlight the conceptual connections between cultural rights, the public domain and common heritage. This is broadly consistent with the doctrine of common heritage of mankind coming to be embraced within human rights law, for example, as a tenet recognized in the preamble of the United Nations Declaration on the Rights of Indigenous Peoples.<sup>1119</sup>

The principle of common heritage of mankind has as its starting point a concept similar to that of the public domain, but to this is added a social responsibility framework. Common heritage of mankind proposes that 'all people would be expected to share in the management of a common space area' and economic benefits from the exploitation of that space 'would be shared internationally.'<sup>1120</sup> Its traditional application in the context of natural resources also gives rise to two further aspects, namely that the use of the area 'must be limited exclusively to peaceful purposes' and that scientific research conducted therein 'would be freely and openly permissible, so long as the environment of the common space area was in no way physically threatened or ecologically impaired.'<sup>1121</sup> The deep sea bed is the most commonly identified common heritage of mankind space.<sup>1122</sup>

There are not obvious reasons for treating geographic names, like the deep sea bed, as a common resource managed and accessible by all, with the profits of any economic exploitation to be divided globally and equally. On the contrary, several compelling bases of private legal rights in geographic names have been identified in this study and the existence of these rights weighs against treating geographic names as a communal resource. Private rights also underpin domain names, the fundamental building blocks of the DNS. Some argue that this is not the most appropriate model, that the internet should 'be exploited for the benefit of the people of the world'<sup>1123</sup> and that its governance by a corporation is inappropriate to achieve that aim.

For the internet to be managed as a common resource, its fundamental components must all be shared internationally and decisions respecting its development must be geared to achieving total equality of access. These notions are not *prima facie* inconsistent with the object of ICANN, the California non-profit public benefit corporation established to oversee

1119. United Nations Declaration on the Rights of Indigenous Peoples (2 Oct. 2007) G.A. Res. A/RES/61/295.

1120. Christopher C. Joyner, *Legal Implications of the Concept of the Common Heritage of Mankind*, 35(1) Int'l & Comp. L. Q. 190, 191-192 (1986) (internal citations omitted).

1121. *Ibid.*, 192.

1122. See Dolliver M. Nelson, *Reflections on the 1982 Convention on the Law of the Sea, in The Law of the Sea: Progress and Prospects* 33-34 (Richard Barnes & David Ong eds., Oxford University Press 2006). Antarctica is also put forward as a potential common heritage space. See J.M. Spectar, *Saving the Ice Princess: NGOs, Antarctica & International Law in the New Millennium*, 23 Suffolk Transnational L. Rev. 57 (1999).

1123. Chander, *The New, New Property*, 750.

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domain name system policy, as articulated in the ‘Core Values’ in section 2 of its Bylaws. Yet as ICANN continues its struggle for legitimacy in the eyes of the global internet community, a struggle which has been reinvigorated by recent decisions respecting the addition of new top-level domains to the root, calls for shifting operational and policy control over the DNS to an international intergovernmental organization have intensified.<sup>1124</sup>

Shifting the internet and its DNS out of the private environment championed by ICANN and into shared global management (e.g., to the International Telecommunications Union) would have the effect of quashing any claims to their ‘ownership’ by any sovereign or even by all mankind. This would turn the focus unambiguously towards access and the motivation in policy decision-making conclusively towards the long-term greater good.<sup>1125</sup>

This is in many ways a desirable path for the internet to take, but would unquestionably be fraught with practical and legal difficulties too numerous to list here. These difficulties do not make treating the internet as the common heritage of mankind impossible, but this is not an outcome to be taken lightly or assumed to be inevitable. Additionally, while it is conceptually not difficult to apply such thinking to the governance model, the same is not true for the domain names that are the primary components of the system being governed. These have (if unintentionally) come to be viewed if not as property, then something analogous – a sort of ‘third generation’ or ‘virtual property’.<sup>1126</sup> If treating the internet as we treat the deep sea bed requires treating domain names as belonging to all mankind, any property or related proprietary rights in domain names, the most fundamental components of the DNS, should arguably be extinguished. Such an outcome is entirely antithetical to the way the DNS currently operates and also raises issues of takings of property as discussed earlier in this chapter in the context of the human right to property. At this point in time it is difficult to imagine the occurrence of such a massive shift in thinking.

Sharing the proceeds of exploiting common heritage resources internationally – this is, after all, the social conscience component upon which the principle of common heritage of mankind is based – is also antithetical to the way we presently view and use the privatized internet. In the face of ICANN’s non-profit status, questions have notably been raised about its use of the ‘approximately USD 350 million’<sup>1127</sup> generated by new gTLD

1124. See Patrick S. Ryan, *The ITU and the Internet’s Titanic Moment*, Stanford Tech. L. Rev. 8 (2012); Brito, *ICANN vs. the World*.

1125. See Joyner, 194.

1126. David Nelmark, *Virtual Property: The Challenges of Regulating Intangible, Exclusionary Property Interests Such as Domain Names*, 3(1) Northwestern J. Tech. & Intell. Prop. 1 (2004). See also Chik, *Lord of Your Domain, But Master of None*.

1127. ICANN, *TAS Interruption: Update (4 May 2012)*, <http://newglds.icann.org/en/announcements-and-media/latest> (accessed 15 Oct. 2012).

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applications.<sup>1128</sup> ICANN's response, that 'the community will be consulted as to how that excess should be used',<sup>1129</sup> while supportive of the multi-stakeholder governance model, does not equate to sharing the proceeds of exploiting common heritage resources internationally.

In summary, the current model of internet governance leverages the spirit of the doctrine of the common heritage of mankind without embracing it fully. To do so would require fundamental changes, not just to the governance model itself but to the now firmly established and jealously defended private rights in the domain names so fundamental to the domain name system. Treating the internet, the DNS, and names used in that context as the common heritage of mankind thus reveals itself to be an interesting theory but implausible in practice at this point in time.

9.4 CONCLUSIONS ON HUMAN RIGHTS  
ENCOMPASSING RIGHTS TO GEOGRAPHIC  
NAMES

It is human nature to identify with the communities in which one lives. Modern multi-layered societies give rise to the likelihood that each person makes multiple associations, linking him or herself to a family, a local community, a professional community, a linguistic community, a sub-national region, a nation, a supra-national region. One association is no less important than the other to generating a complete picture of who a person is as a human being and how the person perceives his or her place in this world and wishes others to perceive him or her. To limit a person's ability to articulate this sense of belonging is arguably to limit his or her freedom and therefore violate the most fundamental aspects of his or her humanity. There are thus clear links between human rights and human beings' innate habit of self-identification.

This chapter has considered the most prominent links between human rights and geographic self-identification by analysing the rights to national identity and self-determination, freedom of expression, culture, language and property, as well as the doctrines of the public domain, public property, and common heritage of mankind. Of these, the right to freedom of expression and cultural rights have in particular been shown to offer clear bases for a

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1128. See for example R. Shawn Gunnarson, *Modest Proposals for gTLD Profits*, CircleID (27 Oct. 2011) (available at [http://www.circleid.com/posts/modest\\_proposals\\_for\\_gtld\\_profits](http://www.circleid.com/posts/modest_proposals_for_gtld_profits)) (accessed 15 Oct. 2012); Michael Berkens, *Beckstrom: 'I Took ICANN From \$57 Million Under Management To \$444 Million'*, The Domains (25 Jun. 2012) (available at <http://www.thedomains.com/2012/06/25/beckstrom-i-took-icann-from-57-million-under-management-to-444-million/>).

1129. ICANN, *Frequently Asked Questions: 1.7 Is ICANN initiating the New gTLD Program to make money?*, <http://newgtlds.icann.org/en/applicants/customer-service/faqs/faqs-en> (accessed 15 Oct. 2012).

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person's right to use a geographic name. These rights are not absolute, but they do require consideration by States in reacting and responding to applications for geographic new gTLDs. New gTLD registries should also consider the issues noted in this chapter when developing supplemental policies that restrict the registration of geographic names as domain names in the newly created gTLDs.

The human right to freedom of expression as protected under international law recognizes a person's right not to have access to a geographic name prevented unless this poses a rationally articulated threat to national security or public order. Geographic names are not inherently threatening to national security or public order. Although the contexts in which they are used could give rise to such an interpretation, the existence of threats can only be determined on a case-by-case basis, so a universal rule restricting the use of geographic names on this basis is inappropriate. States' objections to geographic domain names or strings should be scrutinized to ensure that they 'specify the precise nature of the threat allegedly posed by'<sup>1130</sup> the applicant's registration of that name in the DNS.

The human right to culture has also been shown to recognize a person's right to use a geographic name; this right is limited in terms of who may claim it (members of an identifiable cultural group) and when it may be claimed (where the name is integral and there is a risk of direct harm to the culture as a result of the State's action). Analogous arguments have been successfully made linking non-interference with land to the existence, practice and preservation of culture. In the context of the DNS and given the integral role played by the internet in creating, preserving and communicating culture, preventing a cultural group from possessing an online identity and a space in which to freely express and practice its culture could be seen to impinge upon free participation in online cultural life.

It is therefore a principal conclusion of this study that the human right to freedom of expression and the human right to culture stand in the way of a policy of recognizing exclusive rights of States in geographic names' use in the DNS. It is inappropriate to assume that only States have rights in geographic names, or that these rights necessarily always trump the rights of non-State others. Going forward, changes to new gTLD policy respecting geographic names are warranted to acknowledge the existence of these rights. In the interim, States should consider the impact of these rights upon their decision-making as respects new gTLDs.

Although the other rights examined in this chapter offer only scant support for the existence of rights in geographic names, some nevertheless serve to limit State action and should therefore also be borne in mind going forward in DNS policy-making. The human right of self-determination gives to 'peoples' a right to be involved in decision-making respecting geographic names and their use in the DNS. The human right of nationality ensures that

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<sup>1130</sup> *Keun-Tae Kim v. Republic of Korea*, para. 12.5.

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State decisions regarding geographic names do not put a person's possession of a (though not a *specific*) nationality at risk. The human right to language prevents State actions respecting geographic names and their use in the DNS that discriminate on the basis of language.

This is the current and most visible protection available under international human rights law to geographic names, bearing in mind that this area is involved in an ongoing state of development and additional rights may be recognized even in the not-too-distant future. An agreement on the protection of cultural expressions is in progress, as is an agreement on the protection of traditional knowledge. Custom may also develop out of the provision in the Declaration of the Rights of Indigenous Peoples for indigenous peoples to 'retain their own names for communities, [and] places'.

Notwithstanding the existence of human rights encompassing a right to geographic names, there remains the practical problem in the context of the DNS of exclusivity; even if persons or peoples have these rights, it is practically impossible for more than one claimant or group of claimants to exercise such rights by registering them as domain names given the technological requirement of absolute name uniqueness. The law has not yet provided a means of prioritizing these interests. ICANN's approach in new gTLD allocation is to resolve by auction conflicts that are unable otherwise to be resolved.<sup>1131</sup> While this avoids ICANN having to make overt value judgments on specific gTLD applications, it embeds in the New gTLD Program as a whole a value judgment of prioritizing exceptionally funded applicants.

As ICANN gTLD policy matures, due consideration to cultural diversity may require ICANN to make different, overt value judgments. Having taken on the responsibility of ensuring that new gTLD policy is consistent with rights recognized in international law, ICANN has at its disposal the full complement of laws and soft law instruments to assist it in this process. Of particular value is the guidance offered by the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

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1131. ICANN, *gTLD Applicant Guidebook*, section 4.2.2.

**APPENDIX B**

## AMAZON DOMAIN NAME AND TRADEMARK PORTFOLIO IN SOUTH AMERICA

**PRIVATE & CONFIDENTIAL**

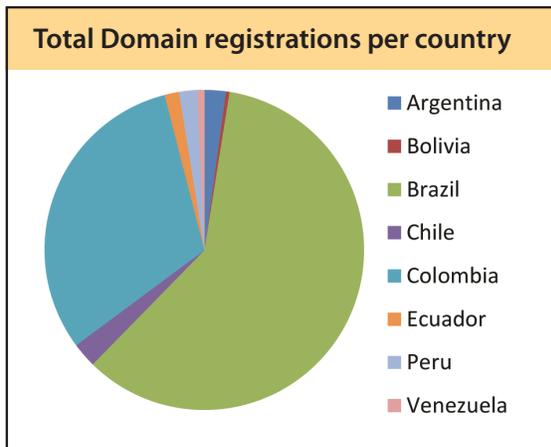
27th March 2013

This summary only includes Domain Names and Trademarks with the “Amazon” name in the eight countries listed. It is not an exhaustive list. Amazon has many more Domains and Trademarks registered in South America (including, for example, the “KINDLE” Trademark). Amazon also owns Domain names in Guyana (AMAZON.GF) and Surinam (AMAZON.SR) but the data is not currently available at the registry level. Some of the Domain Names listed in this report have been acquired from Third Parties and Infringers.

OVERALL SUMMARY

Domain Registrations	
Country	Total
Argentina	6
Bolivia	1
Brazil	165
Chile	7
Colombia	86
Ecuador	4
Peru	5
Venezuela	2
<b>Grand Total</b>	<b>276</b>

Trademark Filings	
Country	Total
Argentina	34
Bolivia	3
Brazil	28
Chile	18
Colombia	13
Ecuador	3
Peru	14
Venezuela	23
<b>Grand Total</b>	<b>136</b>

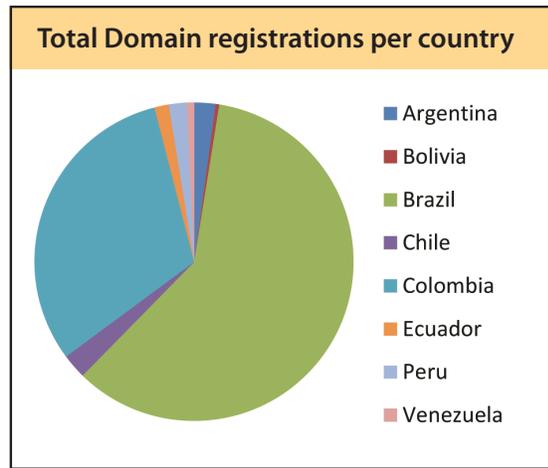


EXTRACT FROM AMAZON DOMAIN PORTFOLIO IN SOUTH AMERICA

Summary

- Second-level domains are not available to anyone in Argentina, Brazil and Venezuela
- Argentina only allows registrations under .com.ar
- Brazil only allows registrations under restricted hierarchies (e.g., .com.br, .org.br)
- Aside from local presence requirements, there is no formal review process for most of these hierarchies
  - The exceptions are .org.br, .srv.br and .tv.br, which are completely “closed”

Domain Registrations	
Country	Total
Argentina	6
Bolivia	1
Brazil	165
Chile	7
Colombia	86
Ecuador	4
Peru	5
Venezuela	2
<b>Grand Total</b>	<b>276</b>



**ARGENTINA****i. .AR Domain Registrations**

Domain Name	Acquisition Date
AMAZON.COM.AR	9/18/1998
AMAZONKINDLEFIRE.COM.AR	9/29/2011
AMAZONCLOUD.COM.AR	9/29/2011
AMAZONSILK.COM.AR	9/29/2011
AMAZONFREETIME.COM.AR	9/6/2012
AMAZONKINDLE.COM.AR	11/30/2007

**ii. Domain registrations with the country name "Argentina"**

Domain Name	Acquisition Date
AMAZONARGENTINA.COM	6/25/2004

**BOLIVIA****i. .BO Domain Registrations**

Domain Name	Acquisition Date
AMAZON.COM.BO	12/23/1999

**ii. Domain registrations with the country name "Bolivia"**

Domain Name	Acquisition Date
AMAZONBOLIVIA.COM	5/11/2007

**BRAZIL****i. .BR Domain Registrations**

Domain Name	Acquisition Date
AMAZON.COM.BR	7/20/2012
AMAZONKINDLEKDK.COM.BR	1/21/2010
AMAZONKINDLEDEVELOPMENTKIT.COM.BR	1/21/2010
AMAZONKINDLEACTIVECONTENT.COM.BR	1/21/2010
AMAZONGAMESERVICES.COM.BR	1/10/2013
AMAZONSQS.COM.BR	12/16/2011
AMAZONCLOUDWATCH.COM.BR	12/16/2011

Domain Name	Acquisition Date
AMAZONELASTICCOMPUTELOUD.COM.BR	12/16/2011
AMAZONSIMPLEDB.COM.BR	12/16/2011
AMAZONSNS.COM.BR	12/16/2011
AMAZONCLOUDFRONT.COM.BR	12/16/2011
AMAZONRDS.COM.BR	12/16/2011
AMAZONS3.COM.BR	12/16/2011
AMAZONCLOUDFORMATION.COM.BR	12/16/2011
AMAZONLOJAVIRTUAL.COM.BR	12/12/2012
AMAZONLOCKER.COM.BR	12/10/2012
WAMAZON.COM.BR	12/7/2012
AMAZONM.COM.BR	12/7/2012
AMAZONL.COM.BR	12/7/2012
EVERYTHINGINAMAZONBRAZIL.COM.BR	12/5/2012
AMAZONFREETIMEUNLIMITED.COM.BR	12/5/2012
SUAMAZONBRASIL.NET.BR	12/5/2012
TUDONAMAZONBRASIL.NET.BR	12/5/2012
SUAMAZONBRASIL.COM.BR	12/5/2012
TUDONAMAZONBRASIL.COM.BR	12/5/2012
YOURAMAZONBRAZIL.COM.BR	12/5/2012
AMAZONBRASILAQUI.NET.BR	12/3/2012
AMAZONSHOPPINGBRASIL.COM.BR	12/3/2012
AMAZONCLICKBUY.COM.BR	12/3/2012
KINDLEBOOKSAMAZON.COM.BR	12/3/2012
YOURAMAZON.COM.BR	12/3/2012
AMAZONMOVIES.COM.BR	12/3/2012
COMPRASNAMAZON.NET.BR	12/3/2012
AMAZONCOMPRASNOBRASIL.COM.BR	12/3/2012
AMAZONAGORANOBASIL.COM.BR	12/3/2012
AMAZONBRASILAQUI.COM.BR	12/3/2012
AMAZONCOMPRASNOBRASIL.NET.BR	12/3/2012
SEUAMAZON.COM.BR	12/3/2012
AMAZONCINEMA.COM.BR	12/3/2012
AMAZONFILME.COM.BR	12/3/2012
COMPRASNAMAZON.COM.BR	12/3/2012
AMAZONAGORANOBASIL.NET.BR	12/3/2012
AMAZONMUSICA.COM.BR	12/3/2012
KINDLEBOOKSAMAZON.NET.BR	12/3/2012
AMAZONSHOPPINGBRASIL.NET.BR	12/3/2012
AMAZONBRAZILHERE.COM.BR	12/3/2012
AMAZONTELEVISION.COM.BR	12/3/2012

Domain Name	Acquisition Date
AMAZONTELEVISION.COM.BR	12/3/2012
AMAZONAUDIO.COM.BR	12/3/2012
AMAZONTELEVISAO.COM.BR	12/3/2012
AMAZONBUYSINBRAZIL.COM.BR	12/3/2012
AMAZONCLICKBUY.NET.BR	12/3/2012
AMAZONINSTANTVIDEO.COM.BR	11/17/2011
AMAZONDEVPAY.COM.BR	11/5/2012
AMAZONMONEY.COM.BR	11/13/2012
AMAZONMONEYACCOUNT.COM.BR	11/13/2012
AMAZONCLOUDDRIVEPHOTOS.COM.BR	11/1/2012
AMAZONDATA.COM.BR	10/23/2011
AMAZONTABLET.COM.BR	10/23/2011
AMAZONBUSCA.COM.BR	10/23/2011
AMAZONTECNOLOGIA.COM.BR	10/23/2011
AMAZONPRESS.COM.BR	10/23/2011
AMAZONIA TECH.COM.BR	10/23/2011
AMAZONSHOPPING.COM.BR	10/23/2011
AMAZONTRAINING.COM.BR	10/23/2011
AMAZONOFERTA.COM.BR	10/23/2011
THEAMAZONS.COM.BR	10/23/2011
AMAZONPLAYER.COM.BR	10/23/2011
AMAZONTABLETS.COM.BR	10/23/2011
FASHIONAMAZON.COM.BR	10/23/2011
SUPERAMAZON.COM.BR	10/23/2011
AMAZONOFERTAS.COM.BR	10/23/2011
AMAZONSITES.COM.BR	10/23/2011
AMAZONKINDLE.COM.BR	10/23/2011
AMAZONCASA.COM.BR	10/23/2011
GREENAMAZON.COM.BR	10/23/2011
AMAZONVOIP.COM.BR	10/23/2011
STUDIOAMAZON.COM.BR	10/23/2011
AMAZONSEXSHOP.COM.BR	10/23/2011
CLOUDAMAZON.COM.BR	10/21/2012
AMAZONKIDS.COM.BR	10/21/2012
AMAZONLIFE.COM.BR	10/21/2012
AMAZONGAME.COM.BR	10/21/2012
AMAZONMEGASTORE.COM.BR	10/21/2012
AMAZONMOBILE.ECO.BR	10/21/2012
AMAZONN.COM.BR	10/21/2012
AMAZONPRIME.COM.BR	10/21/2012

Domain Name	Acquisition Date
AMAZONMOBILE.COM.BR	10/21/2012
AMAZONDUO.COM.BR	10/8/2012
AMAZONCLOUDPLAYER.COM.BR	9/28/2011
AMAZONCLOUDSTORAGE.COM.BR	9/28/2011
AMAZONKINDLETOUCH.COM.BR	9/28/2011
AMAZONSILKBROWSER.COM.BR	9/28/2011
AMAZONCLOUDDRIVE.COM.BR	9/28/2011
AMAZONKINDLEFIRE.COM.BR	9/28/2011
AMAZONSILK.COM.BR	9/21/2011
AMAZON-FAMILY.COM.BR	9/20/2012
AMAZONFAMILY.COM.BR	9/20/2012
AMAZONUSA.COM.BR	9/16/2011
AAMAZON.COM.BR	9/16/2011
AMAZONPREMIUM.COM.BR	9/11/2012
AMAZONBASICS.COM.BR	9/9/2009
AMAZONPOWERFAST.COM.BR	9/6/2012
AMAZONTIMETOREAD.COM.BR	9/6/2012
AMAZONFREETIME.COM.BR	9/6/2012
AMAZONPAPERWHITE.COM.BR	9/6/2012
AMAZONVPC.COM.BR	8/26/2009
AMAZONCLOUDREADER.COM.BR	8/17/2011
AWSAMAZON.COM.BR	8/17/2011
AMAZONEC2.COM.BR	8/17/2011
AMAZONKINDLECLOUDREADER.COM.BR	8/17/2011
AMAZONROUTE53.COM.BR	8/17/2011
AMAZONVIDEOSHORTS.COM.BR	7/24/2012
AMAZONE.COM.BR	7/20/2000
AMAZONVIDEOSHORT.COM.BR	7/20/2012
AMAZONWEB.COM.BR	6/20/2010
AMAZONVIP.COM.BR	6/20/2010
AMAZONSTUDIOS.COM.BR	6/17/2012
AMAZONCOMPRAS.COM.BR	6/17/2012
AMAZONSTORE.NET.BR	6/17/2012
AMAZONKINDLEBOOKS.COM.BR	6/17/2012
AMAZONDOWNPLAYER.COM.BR	6/1/2012
AMAZONMP3PLAYER.COM.BR	6/1/2012
AMAZONDOWNLOADS.COM.BR	6/1/2012
AMAZONMUSICDOWNLOAD.COM.BR	6/1/2012
AMAZONDOWN.COM.BR	6/1/2012

Domain Name	Acquisition Date
AMAZONMUSICDOWNLOADS.COM.BR	6/1/2012
AMAZONGAMECIRCLE.COM.BR	5/25/2012
AMAZONB2B.COM.BR	3/29/2012
AMAZON.EMP.BR	3/26/2012
AMAZONCURSOS.COM.BR	2/26/2012
AMAZONMUSIC.COM.BR	2/26/2012
AMAZONBOOKS.COM.BR	2/26/2012
AMAZONCOZINHA.COM.BR	2/26/2012
AMAZONIAINFORMATICA.COM.BR	2/26/2012
LOJAAMAZON.COM.BR	2/26/2012
AMAZONGLOBAL.COM.BR	2/26/2012
AMAZONMEDIAGROUP.COM.BR	2/26/2012
AMAZONFRESH.COM.BR	2/26/2012
AMAZONNETWORKBRASIL.COM.BR	2/26/2012
AMAZONSEX.COM.BR	2/26/2012
AMAZONLAND.COM.BR	2/26/2012
AMAZONASPRODUCOES.COM.BR	2/26/2012
AMAZONASAUTOS.COM.BR	2/26/2012
AMAZONEXPRESS.COM.BR	2/26/2012
SHOPAMAZON.COM.BR	2/26/2012
AMAZONNETWORK.COM.BR	7/20/2012
AMAZONPRODUCOES.COM.BR	2/17/2012
AMAZON1.COM.BR	2/17/2012
AMAZON.ATO.BR	2/16/2012
AMAZON.SRV.BR	2/16/2012
AMAZON.FLOG.BR	2/16/2012
AMAZON.PPG.BR	2/16/2012
AMAZON.TMP.BR	2/16/2012
AMAZON.RADIO.BR	2/16/2012
AMAZON.VLOG.BR	2/16/2012
AMAZON.IND.BR	2/16/2012
AMAZON.CNG.BR	2/16/2012
AMAZON.REC.BR	2/16/2012
AMAZON.ETI.BR	2/16/2012
AMAZON.INF.BR	2/16/2012
AMAZON.ETC.BR	2/16/2012
AMAZON.WIKI.BR	2/16/2012
AMAZONAPPS.COM.BR	1/9/2012
EAMAZON.COM.BR	2/25/2000

**ii. Subset of the above list plus gTLD registrations with the name “Brazil”**

Domain Name	Acquisition Date
AMAZONBRAZIL.ORG	7/28/2009
AMAZONFASHIONBRAZIL.COM	12/5/2012
YOURAMAZONBRAZIL.COM.BR	12/5/2012
AMAZONBRAZILHERE.COM.BR	12/3/2012
AMAZONBUYSINBRAZIL.COM.BR	12/3/2012
AMAZONBRAZILCOMPANY.COM	9/27/2012
EVERYTHINGINAMAZONBRAZIL.COM.BR	12/5/2012
AMAZONBRAZIL.MOBI	7/28/2009
AMAZONBRAZIL.COM	7/20/2007
BRAZILAMAZON.COM	4/12/2005
AMAZONBRAZIL.BIZ	7/4/2012
AMAZONBRAZIL.INFO	7/2/2009
AMAZONBRAZIL.NET	6/4/2007
BRAZIL-AMAZON.COM	1/15/2008

**ii. Subset of the above list plus gTLD registrations with the name “Brasil”**

Domain Name	Acquisition Date
AMAZONBRASIL.COM	5/29/2012
AMAZONBRASILSHOPPING.COM	3/25/2012
AMAZONFASHIONBRASIL.COM	12/5/2012
SUAMAZONBRASIL.NET.BR	12/5/2012
TUDONAMAZONBRASIL.NET.BR	12/5/2012
SUAMAZONBRASIL.COM.BR	12/5/2012
TUDONAMAZONBRASIL.COM.BR	12/5/2012
AMAZONBRASILAQUI.NET.BR	12/3/2012
AMAZONSHOPPINGBRASIL.COM.BR	12/3/2012
AMAZONCOMPRASNOBRASIL.COM.BR	12/3/2012
AMAZONAGORANOBASIL.COM.BR	12/3/2012
AMAZONBRASILAQUI.COM.BR	12/3/2012
AMAZONCOMPRASNOBRASIL.NET.BR	12/3/2012
AMAZONAGORANOBASIL.NET.BR	12/3/2012
AMAZONSHOPPINGBRASIL.NET.BR	12/3/2012
BRASILAMAZON.COM	5/26/2012
AMAZONBRASIL.ORG	5/9/2012
AMAZONBRASIL.NET	3/26/2012
AMAZONNETWORKBRASIL.COM.BR	2/26/2012

**iii. Domain registrations under .br.com**

Domain Name	Acquisition Date
AMAZON.BR.COM	6/21/2000

**CHILE****i. .CL Domain Registrations**

Domain Name	Acquisition Date
AMAZON.CL	8/25/1999
AMAZONKINDLE.CL	8/26/2010
AMAZONKINDLEFIRE.CL	9/28/2011
AMAZONSILK.CL	9/28/2011
AMAZONCLOUD.CL	9/28/2011
AMAZONFREETIME.CL	9/6/2012
AMAZONITA.CL	3/21/2011

**ii. Domain registrations with the country name "Chile"**

Domain Name	Acquisition Date
AMAZONCHILE.COM	6/25/2003

**COLOMBIA****i. .CO Domain Registrations**

Domain Name	Acquisition Date
AMAZON.CO	2/24/2010
AMAZON.COM.CO	1/21/2000
AAMAZON.CO	7/21/2010
AMAZON.NET.CO	2/8/2010
AMAZON.NOM.CO	2/8/2010
AMAZONADMASH.CO	4/11/2011
AMAZONAPP.CO	10/15/2010
AMAZONAPPS.CO	10/15/2010
AMAZONAPPSTORE.CO	10/23/2012
AMAZONAUTORIP.CO	1/7/2013
AMAZONAWS.CO	7/21/2010
AMAZONAWSGLACIER.CO	8/20/2012
AMAZONBASICS.CO	7/21/2010
AMAZONBOOKS.CO	7/21/2010
AMAZONCLOUDDRIVE.CO	3/28/2011
AMAZONCLOUDFRONT.CO	3/5/2013
AMAZONCLOUDPLAYER.CO	3/28/2011
AMAZONCLOUDREADER.CO	8/9/2011
AMAZONCLOUDSTORAGE.CO	9/28/2011
AMAZONCO.CO	4/20/2011
AMAZONEC2.CO	7/21/2010

Domain Name	Acquisition Date
AMAZONELASTICTRANSCODER.CO	1/28/2013
AMAZONFREETIME.CO	9/6/2012
AMAZONFREETIMEUNLIMITED.CO	12/5/2012
AMAZONFRESH.CO	6/29/2010
AMAZONGAMESERVICES.CO	1/9/2013
AMAZONGLACIER.CO	8/20/2012
AMAZONINSTANTVIDEO.CO	2/22/2011
AMAZONINSTANTVIDEOS.CO	2/22/2011
AMAZONKINDLE.CO	6/29/2010
AMAZONKINDLE.COM.CO	2/8/2010
AMAZONKINDLE.NET.CO	2/8/2010
AMAZONKINDLECLOUDREADER.CO	8/9/2011
AMAZONKINDLEDX.COM.CO	2/8/2010
AMAZONKINDLEFIRE.CO	9/28/2011
AMAZON-KINDLE-FIRE.CO	9/28/2011
AMAZONKINDLETOUCH.CO	9/28/2011
AMAZONL.CO	1/26/2011
AMAZONLOCAL.CO	3/23/2011
AMAZONLOCKER.CO	12/10/2012
AMAZONM.CO	1/26/2011
AMAZONMOBILE.CO	4/29/2011
AMAZONMP3.CO	6/29/2010
AMAZONN.CO	4/20/2011
AMAZONPAYMENTS.CO	7/21/2010
AMAZONPOWERFAST.CO	9/6/2012
AMAZONPRIME.CO	6/29/2010
AMAZONREDSHIFT.CO	11/26/2012
AMAZONS.CO	4/20/2011
AMAZONS3.CO	7/21/2010
AMAZONSELLERCENTRAL.CO	4/5/2011
AMAZON-SELLERCENTRAL.CO	4/5/2011
AMAZONSERVICES.CO	7/21/2010
AMAZONSES.CO	1/25/2011
AMAZONSILK.CO	9/28/2011
AMAZON-SILK.CO	9/28/2011
AMAZONSILKBROWSER.CO	9/28/2011
AMAZON-SILK-BROWSER.CO	9/28/2011
AMAZONSIMPLEEMAILSERVICE.CO	1/25/2011
AMAZONSTUDIOS.CO	11/15/2010
AMAZONSUPPLIES.CO	3/29/2012

Domain Name	Acquisition Date
AMAZONSUPPLY.CO	3/29/2012
AMAZONTICKETS.CO	1/23/2012
AMAZONTIMETOREAD.CO	9/6/2012
AMAZONWEBSERVICES.CO	6/29/2010
AMAZONWEBSTORE.CO	7/21/2010
AMAZONWHISPERCAST.CO	6/20/2012
AMAZONWHISPERNET.CO	7/21/2010
AMAZONWHISPERSYNC.CO	7/21/2010
AMAZONWINE.CO	9/27/2012
AMAZONWORLD.CO	7/21/2010
AWSAMAZON.CO	7/21/2010
EAMAZON.CO	1/26/2011
FULLFILLMENTBYAMAZON.CO	7/21/2010
PAYWITHAMAZON.CO	4/11/2012
PAY-WITH-AMAZON.CO	4/11/2012
QAMAZON.CO	4/20/2011
SELLERCENTRALAMAZON.CO	4/5/2011
SELLERCENTRAL-AMAZON.CO	4/5/2011
SSL-IMAGES-AMAZON.CO	7/21/2010
WAMAZON.CO	1/26/2011
WWAMAZON.CO	7/21/2010
WWWAMAZON.CO	7/21/2010
WWW-AMAZON.CO	1/26/2011
WWWAMAZONCO.CO	4/20/2011
WWWLAMAZON.CO	7/21/2010

**ii. Domain registrations with the country name “Colombia”**

Domain Name	Acquisition Date
AMAZONCOLOMBIA.COM	6/25/2003

## ECUADOR

**i. .EC Domain Registrations**

Domain Name	Acquisition Date
AMAZON.EC	10/22/2003
AMAZON.COM.EC	1/28/1998
EAMAZON.EC	10/22/2003
EAMAZON.COM.EC	6/16/2000

**ii. Domain registrations with the country name "Ecuador"**

Domain Name	Acquisition Date
AMAZONECUADOR.COM	11/7/2012
AMAZONENECUADOR.COM	9/12/2012
ECUADORAMAZON.COM	10/8/2007

**PERU****i. .PE Domain Registrations**

Domain Name	Acquisition Date
AMAZON.PE	12/8/2007
AMAZON.COM.PE	3/16/1998
AMAZONKINDLE.PE	2/21/2008
AMAZONKINDLE.COM.PE	2/21/2008
EAMAZON.COM.PE	5/8/2000

**ii. Domain registrations with the country name "Peru"**

Domain Name	Acquisition Date
AMAZON-PERU.COM	7/3/2005

**VENEZUELA****i. .VE Domain Registrations**

Domain Name	Acquisition Date
AMAZON.COM.VE	4/5/2000
AMAZON.CO.VE	4/5/2000

**ii. Domain registrations with the country name "Venezuela"**

Domain Name	Acquisition Date
AMAZONVENEZUELA.COM	6/25/2003
AMAZONVENEZUELA.NET	5/21/2011

## EXTRACT FROM AMAZON TRADEMARK PORTFOLIO IN SOUTH AMERICA

## Summary

Trademark Filings	
Country	Total
Argentina	34
Bolivia	3
Brazil	28
Chile	18
Colombia	13
Ecuador	3
Peru	14
Venezuela	23
<b>Grand Total</b>	<b>136</b>



## ARGENTINA

Title	Status	Application #	Application Date	Registration #	Registration Date
AMAZON.COM (42)	Registered	12186	9/16/1999	89500-C	3/20/2003
AMAZON.COM (38)	Registered	12187	9/16/1999	89501-C	3/20/2003
AMAZON.COM (35)	Registered	12188	9/16/1999	89499-C	3/20/2003
AMAZON (28)	Registered	2.278.422	4/3/2000	1.841.859	8/28/2001
AMAZON (45)	Registered		4/3/2000	1.841.855	8/28/2001
AMAZON.COM (38)	Registered	2.241.592	9/16/1999	1.816.575	1/19/2001
AMAZON.COM (43)	Registered	1816578	9/16/1999	3063134	1/19/2001
AMAZON (22)	Registered	2.278.419	4/3/2000	1.841.856	8/28/2001
AMAZON (35)	Registered	2.278.423	4/3/2000	1.841.860	8/28/2001
AMAZON.COM (44)	Registered	1816578	9/16/1999	3063136	1/19/2001
AMAZON (20)	Registered	2.278.417	4/3/2000	1.841.865	8/28/2001
AMAZON.COM (39)	Registered	2.241.593	9/16/1999	1.816.576	1/19/2001
AMAZON (15)	Registered	2.278.413	4/3/2000	1.843.616	9/14/2001
AMAZON (38)	Registered	2.278.425	4/3/2000	1.841.852	8/28/2011
AMAZON (24)	Registered	2.278.420	4/3/2000	1.841.857	8/28/2001
AMAZON (25)	Registered	2.278.421	4/3/2000	1.841.858	8/28/2001
AMAZON (39)	Registered	2.278.426	4/3/2000	1.841.853	8/28/2001
AMAZON.COM (42)	Registered	2.241.595	9/16/1999	1.816.578	1/19/2001
AMAZON.COM (41)	Registered	2.241.594	9/16/1999	1.816.577	1/19/2001
AMAZON.COM (Design) (41)	Registered	2.295.175	7/4/2000	1.853.698	11/29/2001
AMAZON (07)	Registered	2679845	6/22/2006	2.235.755	6/24/2008
AMAZON (11)	Registered	2.278.410	4/3/2000	1.916.903	3/6/2003

Title	Status	Application #	Application Date	Registration #	Registration Date
AMAZON (19)	Registered	2.278.416	4/3/2000	1.841.864	8/28/2001
AMAZON.COM (Design) (45)	Registered	2.295.175	7/4/2000	1.853.698	11/29/2001
AMAZON (09)	Registered	2.278.409	4/3/2000	1.843.614	9/14/2001
AMAZON (06)	Registered	2.278.406	4/3/2000	1.852.192	11/19/2001
AMAZON (41)	Registered	2.278.427	4/3/2000	1.841.854	8/28/2001
AMAZON.COM (Design) (42)	Registered	2.295.175	7/4/2000	1.853.698	11/29/2001
AMAZON.COM (45)	Registered	1816578	9/16/1999	3063138	1/19/2001
AMAZON.COM (35)	Registered	2145224	4/22/1998	1779480	3/17/2000
AMAZON.COM (Design) (35)	Registered	2.679.846	6/22/2006	2.371.391	5/28/2010
AMAZON (12)	Registered	2.278.411	4/3/2000	1.843.615	9/14/2001
AMAZON.COM (35)	Registered	2977762	2/9/2010	2418099	
AMAZON (08)	Registered	2679844	6/22/2006	2.235.754	6/24/2008
AMAZON (21)	Registered	2.492.843	2/3/2004	2049762	10/31/2005
AMAZON (42)	Registered	2278428	03/04/2000	1841855	28/08/2001
AMAZON (11)	Registered	2278410	03/04/2000	1916903	06/03/2003

**BOLIVIA**

Title	Status	Application #	Application Date	Registration #	Registration Date
AMAZON.COM (42)	Registered	12186	9/16/1999	89500-C	3/20/2003
AMAZON.COM (38)	Registered	12187	9/16/1999	89501-C	3/20/2003
AMAZON.COM (35)	Registered	12188	9/16/1999	89499-C	3/20/2003

**BRAZIL**

Title	Status	Application #	Application Date	Registration #	Registration Date
AMAZON.COM (42)	Registered	12186	9/16/1999	89500-C	3/20/2003
AMAZON.COM (38)	Registered	12187	9/16/1999	89501-C	3/20/2003
AMAZON.COM (35)	Registered	12188	9/16/1999	89499-C	3/20/2003
AMAZON.COM (35)	Registered	819841978	3/11/1997	819841978	06/08/2002
EAMAZON (35)	Registered	823149196	9/14/2000	823149196	29/01/2008
EAMAZON (41)	Published	823149170	9/14/2000		
AMAZON.COM (40, 35, 34, 15, 40, 40)	Opposed	822027178	9/17/1999		
AMAZON BASICS (Design) (9)	Opposed	902.170.791	12/4/2009		
AMAZON BASICS (Design) (2)	Opposed	902.170.759	12/4/2009		
AMAZON.COM (38)	Opposed	822027186	9/17/1999		
AMAZON BASICS (Design) (16)	Published	902.170.970	12/4/2009		
AMAZON WEB SERVICES (Design) (42)	Published	830958193	3/14/2011		
AMAZON BASICS (Design) (18)	Published	902.171.038	12/4/2009		
AMAZON BASICS (Design) (20)	Published	902.171.054	12/4/2009		
AMAZON BASICS (Design) (28)	Published	902.171.089	12/4/2009		

Title	Status	Application #	Application Date	Registration #	Registration Date
AMAZON ROUTE 53 (35)	Published	831237465	10/6/2011		
AMAZON ROUTE 53 (42)	Published	831237481	10/6/2011		
AMAZON 1-CLICK (35)	Published	831284420	12/19/2011		
AMAZON ROUTE 53 (45)	Published	831237490	10/6/2011		
AMAZON.COM (Design) (39)	Published	901764167	7/3/2009		
AMAZON PRIME (35)	Filed	901.961.566	9/17/2009		
AMAZON BASICS (Design) (11)	Filed	902.171.160	12/4/2009		
AMAZON FLOW (41)	Filed	840101309	4/24/2012		
AMAZON FLOW (38)	Filed	840101295	4/24/2012		
AMAZON FLOW (9)	Filed	840101279	4/24/2012		
AMAZON FLOW (42)	Filed	840101260	4/24/2012		
AMAZON FLOW (35)	Filed	840101287	4/24/2012		
EAMAZON (42)	Filed	823149188	9/14/2000		
AMAZON.COM (Design) (35)	Filed	822962683	7/12/2000		
AMAZON SILK	Filed	840278829	9/26/2012		
AMAZON SILK	Filed	840278802	9/26/2012		

## CHILE

Title	Status	Application #	Application Date	Registration #	Registration Date
AMAZON.COM (Design) (35, 42)	Registered	493.083	7/13/2000	587.362	1/10/2001
AMAZON.COM (35, 42)	Registered	419.597	7/6/1998	532.142	1/14/1999
AMAZON (19)	Registered	482.675	4/14/2000	917.781	10/30/2000
AMAZON (09)	Registered	482.668	4/14/2000	917.795	10/30/2000
AMAZON (42)	Registered	482.687	4/14/2000	905.356	10/30/2000
AMAZON (11)	Registered	482.669	4/14/2000	917.794	10/30/2000
AMAZON (38)	Registered	482.684	4/14/2000	905.355	10/30/2000
AMAZON (24)	Registered	482.679	4/14/2000	917.778	10/30/2000
AMAZON (16)	Registered	482.673	4/14/2000	917.783	10/30/2000
AMAZON (35)	Registered	482.682	4/14/2000	916.919	3/15/2001
AMAZON (20)	Registered	482.676	4/14/2000	917.780	10/30/2000
AMAZON (18)	Registered	482.674	4/14/2000	917.782	10/30/2000
AMAZON (08)	Registered	482.667	4/14/2000	917.852	10/30/2000
AMAZON (21)	Registered	482.677	4/14/2000	917.779	10/30/2000
AMAZON (06)	Registered	482.665	4/14/2000	917.853	10/30/2000
AMAZON (15)	Registered	482.672	4/14/2000	917.784	10/30/2000
AMAZON (22)	Registered	482.678	4/14/2000	917.777	10/30/2000
AMAZON (41)	Registered	482.686	4/14/2000	905.357	11/23/2000

## COLOMBIA

Title	Status	Application #	Application Date	Registration #	Registration Date
AMAZON.COM (35 Exp.)	Registered	9/9/1999	99 057177	228783	8/24/2000
AMAZON.COM (39)	Registered	9/3/1999	99 055879	227347	5/19/2000
AMAZON.COM (35)	Registered	9/9/1999	99 057176	227353	5/19/2000
AMAZON.COM (35)	Registered	1/17/1998	98021304	214594	11/30/1998
AMAZON (42)	Registered	4/17/2000	28290	232563	1/18/2001
AMAZON (28)	Registered	4/14/2000	27869	232928	1/18/2001
AMAZON (36)	Registered	4/14/2000	27867	232929	1/18/2001
AMAZON (35)	Registered	4/17/2000	28289	232564	1/18/2001
AMAZON (16)	Registered	4/14/2000	27870	232927	1/18/2001
AMAZON (41)	Maintenance	4/14/2000	27863	233711	4/17/2001
AMAZON (09)	Registered	4/14/2000	27862	232931	1/18/2001
AMAZON (38)	Registered	4/14/2000	27865	232930	1/18/2001
AMAZON (39)	Registered	4/14/2000	27860	231398	12/5/2000

## ECUADOR

Title	Status	Application #	Application Date	Registration #	Registration Date
AMAZON.COM (42)	Registered	100673	12/7/1999	3939-01	2/15/2001
AMAZON.COM (38)	Registered	100672	12/7/1999	3938-01	2/15/2001
AMAZON.COM (35 Exp.)	Registered	100671	12/7/1999	3937-01	2/15/2001

## PERU

Title	Status	Application #	Application Date	Registration #	Registration Date
AMAZON.COM (09)	Registered	91641	9/17/1999	60814	1/31/2000
AMAZON (42)	Registered	104374	4/14/2000	27088	9/18/2001
AMAZON.COM (39)	Registered	91643	9/16/1999	20329	2/10/2000
AMAZON (09)	Registered	104382	4/14/2000	67013	10/19/2000
AMAZON (28)	Registered	104380	4/14/2000	64833	7/19/2000
AMAZON.COM (38)	Registered	91640	9/17/1999	20199	1/31/2000
AMAZON (16)	Registered	471193	4/14/2000	3649	11/30/2001
AMAZON (39)	Registered	104378	4/14/2000	26129	6/21/2001
AMAZON.COM (35)	Registered	91639	9/17/1999	22001	7/11/2000
AMAZON (38)	Registered	104379	4/14/2000	23429	10/27/2000
AMAZON (35)	Registered	104778	4/19/2000	26185	6/28/2001
AMAZON.COM (16)	Registered	405372	11/13/2009	164233	6/17/2010
AMAZON.COM (42)	Registered	91642	9/17/1999	20241	1/31/2000
AMAZON (41)	Registered	06/10/2185	14/04/2000	26648	08/08/2001

## VENEZUELA

Title	Status	Application #	Application Date	Registration #	Registration Date
AMAZON (01, 02, 29, 30, 33)	Registered	4/6/2000	2000-005735	P-228432	11/22/2000
AMAZON (21, 23, 24, 26)	Registered	4/6/2000	2000-005737	P-228434	11/22/2000
AMAZON (18, 21)	Registered	4/6/2000	2000-005731	P-228428	11/22/2000
AMAZON (08, 19)	Registered	4/6/2000	2000-005734	P-228431	11/22/2000
AMAZON (13, 14)	Registered	4/6/2000	2000-005729	P-228427	11/22/2000
AMAZON (21, 31)	Registered	4/6/2000	2000-005726	P-228424	11/22/2000
AMAZON (27, 28)	Registered	4/6/2000	2000-005733	P-228430	11/22/2000
AMAZON (03, 41)	Registered	4/6/2000	2000-005732	P-228429	11/22/2000
AMAZON (41)	Maintenance	4/11/2000	2000-006094	S-016674	6/1/2001
AMAZON.COM (38)	Maintenance	9/17/1999	16.203-99	S-017924	8/27/2001
AMAZON (36)	Registered	4/6/2000	2000-005725	P-228423	11/22/2000
AMAZON (23)	Registered	4/6/2000	2000-005728	P-228426	11/22/2000
AMAZON (39)	Maintenance	4/11/2000	2000-006090	S-016673	6/1/2001
AMAZON (32)	Registered	4/6/2000	2000-005738	P-228435	11/22/2000
AMAZON (28)	Maintenance	4/11/2000	2000-006093	P-233100	8/27/2001
AMAZON (42)	Registered	4/6/2000	2000-005724	P-228422	11/22/2000
AMAZON.COM (35)	Maintenance	9/17/1999	16.205-99	S-017926	8/27/2001
AMAZON (16)	Maintenance	4/11/2000	2000-006091	P-233099	8/27/2001
AMAZON (07)	Registered	4/6/2000	2000-005727	P-228425	11/22/2000
AMAZON (12)	Registered	4/6/2000	2000-005736	P-228433	11/22/2000
AMAZON.COM (42)	Maintenance	9/17/1999	16.204-99	S-017925	8/27/2001
AMAZON (50)	Registered	4/6/2000	2000-005739	S-015775	11/22/2000
AMAZON (05)	Opposed	4/6/2000	2000-005730		

**APPENDIX C**

DURBAN – GAC Plenary 2  
Saturday, July 13, 2013 – 16:00 to 17:00  
ICANN – Durban, South Africa

CHAIR DRYDEN:

Good afternoon again, everyone. If we could begin to take our seats, please, we will begin.

Okay. Let's get started on our next session.

So we now have about 45 minutes to deal with our next agenda item regarding the GAC Beijing communique and where we stand regarding the responses from the Board or the New gTLD Program Committee on that communique.

And then at 5:00 we have, as you I think are aware, we have canceled the Board/GAC Recommendation Implementation Working Group session as we will talk about GAC early engagement in the policy development process when we meet with the GNSO. And I understand that Board colleagues from the Board/GAC working group will aim to be in attendance when we discuss that in the GNSO. So we will still have the benefit of their involvement in those discussions. And so in light of having this additional time and a late request from a group that wishes to establish a constituency for geo registries, that the vice chairs were very supportive of including in our agenda. They were able to agree to come and brief us at 5:00 on that. So we've allotted 30 minutes to receive a briefing from them. And I expect it will be along the same lines as the briefing we received in Beijing from the group wanting to set up the Brand Registry Group, which I understand has now been set up.

So that will happen at 5:00. So in the meantime, here's what I would like us to accomplish.

We have a few documents that we can refer to for these next discussions, and I think probably the one that's most clear and summarizes everything nicely is the NGPC consideration of GAC Beijing advice dated 3rd July 2013, which is the full scorecard. So you will note that between Beijing and now, we have been getting scorecards coming from the New gTLD Program Committee, and based on their most recent meeting and resolutions and decisions coming out about the GAC's advice, they have now formulated a complete scorecard. So this is the state of play in terms of their responses on the entire Beijing communique including annex 1. And so this is a useful tool for us to see at a quick glance the state of play regarding the policy program committee's consideration of the GAC's advice. As well, recently circulated was a paper coming from the New gTLD Program Committee of the Board and that is titled "Questions and Concerns Regarding Portions of the GAC's Safeguard Advice." And this is focused on the category 1, which also relates to what is being called category 2.1 of the annex to the Beijing communique, where the committee has identified outstanding questions or concerns for the GAC.

And so this paper is meant to give us further information, further guidance for when we meet with them tomorrow morning, I think at 10:00, to look at these main outstanding issues that come from our Beijing communique.

The other issue is regarding the issue of implementation of acronyms of the intergovernmental organizations, and how to be responsive to the

concerns that have been raised by the IGOs in light of the questions coming from the Board there as well. And we can find some guidance from the New gTLD Committee in the covering letter from the 3rd of July that was sent to us and signed by the chair of the Board, and in the first section there entitled "Initial Protections for IGO Protections," and that is to update the GAC on some of the decisions they have made and some of the questions or concerns that they are now raising with us and the IGO coalition on that.

So I think these are the key outstanding issues, but I do expect that colleagues here will identify others if they think there are other parts of the scorecard where they would like the GAC to comment further or provide further guidance.

So at this point, can we take any initial comments from colleagues about where we are and their thoughts about the agenda that we have identified for tomorrow morning for our exchange with the New gTLD Program Committee?

China, please.

I'm sorry, I can't see who is raising their hand. But, please, go ahead.

CHINA: I have no question.

PERU: This is Peru, Chair.

CHAIR DRYDEN: Please, go ahead, Peru.

PERU: Okay. Thank you so much, Madam Chair. Peru is taking the floor on behalf of a sizable number of countries concerned about the application of geographic names and in general with the application of dot Amazon in particular, concerns that we would like to request the GAC members to endorse. However, personally, allow me just to salute our fellow colleagues here and to express our appreciation to the government of South Africa for hosting us.

This statement is submitted by Argentina, Brazil, Chile, Peru, and Uruguay with the full support of the Amazon region countries.

And it reads as follows: We acknowledge that the GAC principles regarding new gTLDs adopted in 2007 clearly establish that the principles shall not prejudice the application of the principle of national sovereignty. Besides, we understand that highlighting the importance of public interest is a relevant element that gives stability, sustaining the multistakeholder model, and ultimately the legitimacy of ICANN's administration.

In this sense, this model should contemplate adequate mechanisms before the GAC to guarantee a proper representation of the governments and their communities regarding the public policy issues within the ICANN framework. It is fundamental that governments have the adequate instance where their opinions can be effectively considered, particularly in a content of unprecedented wide-open call for application that has brought uncertainty for both governments and

applicants and has created conflicts with system rules and will establish precedents and benchmarking for future operations.

In the context of the last applications for new gTLD process, various strings have generated concerns from different countries. This is the case of Brazil, Peru, and the Amazonic countries with the application for dot Amazon by the company Amazon, Inc. and, until very recently, was the case for Argentina and Chile with the application of dot Patagonia.

From the beginning of the process, our countries have expressed their concerns with the aforementioned applications presenting various documents to the GAC, referring to the context and basis of the national and regional concerns, including early warning and GAC advice requests.

Various facts recorded in several historiographical, literary and official documents throughout history, including the recent official regional declarations, have been submitted and explained by each country directly to the GAC and to the applicants through the established procedures and through an active engagement process with the interested parties that has allowed us to explain our position for requesting the withdrawal of the applications.

This is the position adopted, for example, by the fourth Latin American and Caribbean Ministerial Conference on Information Society, the Amazon Cooperation Treaty Organization, the Brazilian Internet Steering Committee, the Brazilian Congress, and the Brazilian civil society, the Peruvian Congress Commission on Indigenous Peoples, local governments of the Peruvian Amazon region, and several representatives of the Peruvian civil society.

The 2007 principle states that ICANN's core values indicate that the organization, while remaining rooted in the private sector, recognizes that governments and public authorities are responsible for public policy and should take into account governments and public authorities' recommendations.

They also make reference to the provision of the Universal Declaration of Human Rights and the obligation that the new gTLDs should respect the sensitivities regarding terms with national, cultural, geographic, and religious significance.

They clearly add that ICANN should abide country, territory or place names and country, territory or regional language or people descriptions unless in agreement with the relevant governments or public authorities. Therefore, within the context of the approved principles, there is clear basis that supports our position as governments.

We understand that the introduction, delegation, and operation of new gTLDs is an ongoing process, and, therefore, it is subject to constant evaluation, evolution, and change in order to improve the program.

Being the first applications to be analyzed, the decision that will be taken are going to be relevant for future cases and will have effects in future applications which might potentially affect every country. In relation with this application, involved governments have expressed serious concerns related to the public interest. In particular, dot Amazon is a geographic name that represents important territories of some of our countries which have relevant communities with their own

culture and identity directly connected with the name. Beyond the specifics, this should also be understood as a matter of principle.

During our last meeting in Beijing, the great majority of the governments represented in the GAC understood the legitimate concerns we have raised related to the use of geographic names in new gTLDs. We believe that this new GAC meeting is again an important opportunity for the GAC to give a clear mandate following the current principles for new gTLDs, approving the GAC advice proposals submitted by Brazil and Peru for dot Amazon address to the ICANN Board in order to reject this application.

We stand by the commitment to the GAC principles regarding new gTLDs adopted in 2007 which require countries' prior approval for the filing of geographic names and encourage ICANN to formulate clear criteria limiting the utilization of geographic names as top-level domain names in the next round of the program.

Thank you, chair.

CHAIR DRYDEN:

Thank you for those comments, Peru.

The GAC will discuss this agenda item on Tuesday at 10:30, I believe. So I consider your comments relevant to that particular agenda item.

All right. Peru, you have further comments.

PERU: Yes, just very briefly. Just we will come back in the next opportunity on this, but just to let our colleagues know that this statement has already been provided by the secretariat and you must have it all in your -- in the Internet in your mail accounts.

Thank you.

CHAIR DRYDEN: Thank you for that clarification about the materials.

So for that agenda item regarding the strings for further consideration that we outlined in the Beijing communique, we do have materials that we have posted and circulated and that are available to GAC colleagues, and that includes statements and reports from GAC members.

So if we look at the state of play with the overall scorecard and views regarding the agenda specifically identified for exchange with the new gTLD policy committee tomorrow, are there thoughts on -- for example, do we have agreement that those are the key items that we have a need to exchange with the committee tomorrow on. Is there anything further that colleagues would like to flag that the GAC may need to look at this week in terms of the response?

As I say, most of the advice was accepted by the New gTLD Committee of the Board. And then as I say, there are these outstanding items that we will have a discussion about with the New gTLD Committee tomorrow.

So I see Switzerland and Australia.

Thank you.

SWITZERLAND:

Thank you, Madam Chair.

There's one other issue I would -- wanted to bring to the attention. In the GAC communique of Beijing, we had -- not in the safeguard part but in the general advice on new gTLDs, we had a text about community support for applications which basically says that in cases where a community has expressed a collective and clear opinion, positive or negative, on an application, that ICANN should take this into account. And ICANN basically just responded referring to the community evaluation and objection process.

And the idea of this text is that this should be done also in cases where there has been no community application or no community objection, but because some of the communities were not aware of these procedures or have been advised not to use them for reasons because they were too complicated or others things. There's lots of feedback that we have got in the past months that many communities, although they would -- they are clearly community, did not use these procedures and the idea of this text in the communique was to raise the awareness about this to ICANN and to the Board. And I think we should clarify this in the meeting with the gTLD committee; that we did not intend just to refer to the existing structures but that (indiscernible) is more fundamental than this.

Thank you.

CHAIR DRYDEN:

Thank you for that, Switzerland.

My quick reaction is in terms of the understanding around what was intended by the GAC's advice, I remember there was some back and forth about that. And I think what we would need to do is, as a GAC, have a discussion about whether there's agreement that we would clarify along the lines you're proposing.

It's not clear to me at this point that we could do that, so let's create time for us to have that discussion, and then we can also raise it in the exchange with the Board on Tuesday, and then focus on the current agenda of the New gTLD Committee.

So we will take note of the need for a follow-up discussion in the GAC about what was intended in providing this advice, which was accepted by the Board gTLD committee, and identify what, if anything further, we would want to comment on or advise on. And we can also make use of the meeting that we have at the end of Tuesday with the Board.

So let's take careful note of that item and deal with it this way.

Okay. So next I have Australia, then United States, then Germany.

So Australia, please.

AUSTRALIA:

Thank you, Chair.

So I have a number of comments about the agenda. The first one is on the questions which the Board has sent through to the GAC to help structure our discussion, or the New gTLD Program Committee has sent through.

For those who have had a chance to read them, as they only came through today, I think, they're quite detailed. And one thing which I think would be interesting to focus on in our discussion with the committee is if there are any areas of potential agreement. It seems where -- they've focused in great detail on the wording of a particular phrase and various questions, and they've gone into quite a lot of detail. The sense that I don't have from the feedback that we've got is areas where there may not be questions or where there is potentially some sort of provisional agreement. And it might be interesting to draw out areas where there aren't issues and see if we can build on those rather than diving into detailed areas where we may sort of get lost, so to speak.

The second one is I think we may -- although I don't think it's been flagged directly by the committee, we may be in a discussion with them about the closed generic issue. I also think the response from the Board indicates that they've accepted in part, there's a dialogue in the remainder. And in the dialogue it's mentioned they will seek clarification on our advice with respect to exclusive registry access.

And from the way it's phrased, I'm not exactly sure which bits they're going to seek clarification on. So I think it might be something for us to be prepared for.

There's a number of component parts to that GAC advice in terms of generic strings, what the public interest may be and so on.

So I'm not sure where the Board will focus, but their scorecard response does flag that they will want to talk with us about that at some stage.

And a potential third thing to consider is another one that the Board accepted the advice, but potentially where there may be still further questions is on the question of singles and plurals where we asked the Board to reconsider this. The Board did and considered that their initial response, reaction was okay.

I'm interested in whether any other GAC colleagues are as convinced as the Board is.

I think from my perspective, it still seems to raise questions from a very simple common-sense perspective.

I understand that there is an expert group that has provided advice here about confusability and so on. And -- But from a user perspective, I still find it very difficult to believe that this will not be confusing; that there will be a string and a plural of a string with an "S" at the end and that users will understand the difference.

There's a number of other aspects to this, potential gaming behaviors. In the second round, if it seemed to be okay to apply for plurals, what's to stop applicants from applying for plurals of very successful gTLDs in this round just to leverage off of that marketing and success and so on.

But I am concerned about consumer confusion with singles and plurals, and I'm interested to see whether anyone else shares that concern.

CHAIR DRYDEN:

Thank you very much for those comments, Australia.

So your first proposal to try and give some focus to our discussions and approach regarding the issues raised in the paper that we've just

received I think is a practical one. So I'm happy for us to try to identify areas where we do agree with them as a way to help us move through consideration of these outstanding issues and touching upon closed generics and precisely how that will be handled. What the process is around that I think will be of interest to us to understand as well. So I have taken note of that.

Regarding singular and plurals, I will put them in the same pile, put that issue in the same pile as that raised by Switzerland regarding community support. So that allows us, again, to have GAC discussion following our exchange with the committee tomorrow morning. And then if we wish to raise that in the meeting with the Board, we can do so. And having done so, after hearing from colleagues in the GAC and having a more full discussion. And again, this allows us to focus on the outstanding category safeguard advice for tomorrow morning and the IGOs issue.

Okay. So we have a second agenda forming that we will find time to discuss as a GAC later on.

Okay. So next I have United States, please.

UNITED STATES OF AMERICA: Thank you, Madam Chair.

First, I did think it's useful to throw this out there, and I trust that colleagues will share our view, I hope. I think the Board, the New gTLD Committee has been amazingly responsive to the GAC, and I think this approach that is being followed of following the scorecard kind of

methodology and coming back to the GAC after succeeding meetings is extremely helpful so that we know what their thinking is.

And I think I'd like to -- hopefully we will also say this to the Board when we meet in public with the whole community. I think we also owe a great deal of gratitude to the entire community for being so responsive to the GAC's Beijing advice. And I think all of the applicants clearly stepped up and responded to the Beijing communique in a very short window, and every other interested member of the community did as well.

So I think it's worthy of note that the community was incredibly responsive to the Beijing communique.

So I just wanted to put that out as sort of a threshold statement.

We have been tracking all of the Board messages back to the GAC. Unfortunately, and with apologies to them, but this latest communication just came to us today, and I had very similar questions as Peter did from Australia. In some cases it's not entirely clear to me what the Board is actually asking of the GAC. So -- And maybe they think turn about is fair play, perhaps. Maybe we weren't as clear, they thought, as we needed to be in our Beijing communique. But, for example, when they have that side-by-side list of some generic words and highly regulated sectors, I'm not entirely clear I understand what they're asking us to do. To verify whether a sector -- a string represents a regulated sector or not.

So we might want to try to frame some questions -- I don't know whether colleagues share the hesitation I have or the questions I have. I'm just not entirely clear what they're asking us to do with them.

They also point out -- Apologies, colleagues. I have managed to attract germs from several airplane rides, so I hope it doesn't get worse.

They also talk about we didn't have a principled basis for distinguishing between certain categories and certain strings. So I'm not taking issue necessarily with what they're raising with us. I'm just not entirely sure I know what they're asking us to help them do as a next step.

So I would certainly welcome thoughts from colleagues as to how we tackle these questions, because I assume we have, all of us, a shared goal as to moving the ball further down the field. We'd like to take as many of these things off the list as we possibly can.

And I did want to make just a comment, since we haven't yet met with the New gTLD Committee. But on the IGO issue, just to sort of confirm that it might take away from the most recent conference call that we held with the board members, which I thought was extremely helpful. So appreciation to you, Chair, as well for setting that up and managing to that have held before we came.

I understand the Board's statement to be they have accepted our advice in theory, and they've accepted it concretely for IGO names, but where we remain sort of -- where more work remains to be done is vis-a-vis IGO acronyms.

So I did not hear them say that they would not protect acronyms, but that they need to engage with us further. So I took that as a good sign.

And my understanding, and I hope that colleagues will share their impression, those of you who were on the call, that the primary question I think they want to work with us on is exactly what process we will be following to review those acronyms that actually have -- are in use and can be legitimately used by third parties.

So as we will all recall our IGO coalition, they worked very hard. They developed a proposed approach, and that was circulated around the GAC list and sent to the Board. And I'm going to put words in the Board's mouth, and I think I'm correct but the Board can obviously correct me if I'm wrong, and certainly colleagues can as well. My take-away from the July 3rd call was that the hesitation on the Board's part about the proposed process was that it put the IGOs themselves in a position of being judge and jury as to whether a third entity has a legitimate right to use that acronym. And I think that's the crux of the problem. Having said that, I think there should also be a solution; that we remove the IGOs from being judge and jury and rely on a more neutral approach, whether it's some variation of the trademark clearinghouse notification function. Something along those lines that would actually provide a different platforms so that -- and I'll use the World Health Organization, if I may -- the World Health Organization could get a notification if a legitimate third-party use of the word "who" in the English language for any TLD that had nothing to do with the health sector. And presumably the World Health Organization would consider that legitimate. I'm just throwing that out as an example. They're not here to speak but it strikes me that would be legitimate.

We need to find, I think, a more streamlined, cleaner way, more neutral approach where the IGOs are not somehow -- and I think they put

themselves forward actually in an attempt to be helpful. So I'm looking at my IGO colleagues. I know that was probably their intention. But I think we have to appreciate there is some sensitivity on this issue.

So I just wanted to throw that out, and I trust that others have the same perspective. If you do not, then we should probably talk about this before we meet with the Board.

So thank you.

CHAIR DRYDEN:

Thank you for that, United States.

So I think you've helpfully identified a couple of issues for us from the paper that it would be useful for us to raise when we meet with the gTLD committee.

And regarding IGO acronyms, WIPO is ready to comment as well as part of our discussions this afternoon. So I will turn over to them shortly to provide some inputs to us.

But I'm thinking that the crux of the issue as you present it is my understanding as well of where we are.

So hopefully, then, we can turn to the gTLD committee and have them confirm that or clarify for us what is the precise nature of the issue.

So I have Germany next in the speaking order. And unless I have other requests from GAC members -- I have U.K. Okay. And then I will ask EU Commission, and then I will ask WIPO to comment on the IGO acronyms points.

Germany, please, go ahead.

GERMANY:

Thank you. I just want to comment on some of the positions of my colleagues.

First of all, I would like to support U.S. position in respect of the questioning what expect the Board as answer for their questions in respect of our safeguard advice.

I have also some doubt. And maybe in general, the question is what expects ICANN to be the role of the GAC in this respect? And it would be interesting to hear more about this. And maybe we need to discuss it in depth.

Second issue is community support, which was raised by Switzerland. I would like to support this idea, and I think we had an advice in this respect.

I also have the feeling that it was not answered adequately, and I, therefore, see a need for maybe refining our questions or reiterating it, making sure that the answer we received wasn't exactly the one we expected, but this is fine for me to discuss further in the GAC.

The same issue is on string similarity, which is connection to plural and singular issues. I would like to ask the ICANN Board whether they used the same system for identifying string similarities for the ccTLDs, IDN ccTLDs, and for this new gTLD process. And if it was not the same system they used, I think it would be difficult because, frankly, from -- it's more an impression and not a concrete notion, but I have the

impression that the rules in respect of IDN ccTLDs were rather strict, not allowing any changes without infringing string similarity tests. And for the gTLDs, it's the contrary. There seem to be quite a lot of possibilities, even if they seem to be similar. One example is singular plurals. And, for example, I would like to know whether they used the same algorithm. And if not, I think it would be some issue that the GAC could raise and ask questions.

Thank you.

CHAIR DRYDEN:

Thank you very much for that, Germany. That's helping confirm, I think, where we're headed and how to prepare our agendas and discussions for our meetings this week.

Okay. Great.

So next I have United Kingdom, please.

UNITED KINGDOM:

Thank you, Chair. Just two anxieties. Firstly, as maybe several colleagues here have done I did a consultation with our supervisory authorities and regulators last week. And it's a pity we didn't have these questions in time for that. And if there are issues that are in this document that require us to go back to our regulators and supervisory authorities, that's going to take some time. So I hope the Board will appreciate that. We've made this point on previous occasions, I'm sure.

My second anxiety is that I think there's a risk here that we are getting sucked into detailed implementation of safeguards, and I think we do,

as Germany has indicated, need to be mindful of our role in terms of providing high level advice and saying to ICANN really it's your job to implement and you take, you know, advice as you see fit but don't come to the GAC to help you on implementation.

In addition, I just want to say, I support Switzerland on the community applications issue as we discussed in Beijing. This was not about community applicants. It's about those applications that have proved themselves to be representative of communities. And that was the point of the advice. And I -- I fear the GAC has -- sorry, the board has misunderstood the advice. So we can talk this through in our discussion as you suggested.

On IGO acronyms, I think the proposal from the U.S. is a good one. This is a very tricky issue. Over 200 IGOs, some of them have very, you know, popular acronyms -- I mean, popular in the sense they're acronyms used by other wide-ranging commercial and private interests and some are even words and names. So some kind of neutral approach to sorting this out, which I believe the IGO's would be sympathetic to, is -- sounds to me like the way forward. Thank you.

CHAIR DRYDEN:

Thank you for that, U.K. Next I have EU Commission.

EUROPEAN COMMISSION:

Thank you, Chair. The U.K. GAC representative has actually passed on part of the messages I wanted to communicate with this intervention. But we would like to reiterate that the fact that the board gave its reply only on the 2nd of July has given very little time for the European

Commission to run internal consultation since are a big institution, as you know. And hence, for the time we have to engage in discussions with the board, there are some issues that might be still under discussion and we would like to defer big decisions for Buenos Aires. And we've also noticed that the response from the new gTLD community and the questions that are posed to the GAC actually force us to go beyond giving high-level response and force us to go down the road of implementation. Thank you.

CHAIR DRYDEN:

Thank you. Okay. So next we have WIPO to provide us with some comments on the issue of acronyms, I believe. So over to you, please.

WIPO:

Thank you, Madam Chair. Good afternoon, GAC members. My name is Gerry Tang from WIPO, and I am here with my colleague Sam Paltridge from the OECD to my left. We greatly appreciate being given the opportunity to be here speaking on behalf of the IGO coalition. This coalition consists of over 40 IGOs plus another 15 U.N. agencies such as UNICEF and all of us representing a wide range of essential public interests and who are created by and accountable to the states we represent.

The two GAC communiqués from Toronto and Beijing recognize and endorse a strong public interest in protecting both IGO names and acronyms at the top and second level of the Domain Name System. On this basis the GAC and IGO's actively work together to identify a contained list of IGO's whose names and acronyms are to be protected.

Since then the ICANN board has recognized that the remaining issue is the implementation of this protection. In relation to this implementation the board identified three points. First, the languages in which IGO names and acronyms are to be protected. Second, the process for future review of the list. And third, how to handle acronyms for which there may be several claims. IGOs have now provided answers and proposals to each of these points. IGOs have agreed that the names and acronyms will only be protected in up to two languages, rather than the U.N. six languages. IGO's have agreed that the list of names and acronyms would be regularly reviewed, either prior to delegation of any domains in a new gTLD round or every three years, whichever is earlier.

Finally IGOs have agreed that whoever wishes to register a domain name that matches an IGO name or acronym that IGO cannot stand in the way of such registration where the registration is for a bona fide purpose, as opposed to something unlawful or dishonest that would harm the public by pretending some kind of connection with the IGO. Should an IGO and user come into dispute over a proposed domain name registration, that dispute would certainly be able to be reviewed.

The mechanism proposed by the IGOs is workable, efficient, and vitally - - considering that IGOs are publicly funded by your states -- cost effective. That being said, IGOs remain as always flexible and open to engage in good faith discussions with the GAC and the board on the operation of such mechanism. It should, however, be kept in mind that the purpose of these discussions is to implement a system that protects IGO names and acronyms, particularly acronyms which, given that IGO names are a bit of a mouthful, are the identifiers by which IGOs are far

better known, from abuse in a vastly expanded domain name system. And I thank you very much for letting us speak here today.

CHAIR DRYDEN: Thank you very much for those comments. Okay. So I don't see further requests at this time. Okay. Netherlands.

NETHERLANDS: Thank you, Heather. As you -- you asked for topics which could be discussed also in the safeguards and the other sections we have, I want to make the statement on behalf of registry dot Amsterdam which basically says that they will not be able to sign a registry contract because it's in violation of data protection legislation. And there are remediation possibilities, and I think as the geo group will come back to this because it's not only a problem for dot Amsterdam. While they have -- let's say many registries have a problem with signing the current and agreed registry agreement, however, there are remediation and exemptions possible, but this procedure and registry agreement doesn't fit the -- is not, let's say, something which is fit for dot Amsterdam as a public authority. They will all -- they will even be in breach of national legislation, even signing the contract itself and then afterwards remediating it. So I would raise this -- would like to raise this point not now in content but I would raise it in -- also in -- during our talks tomorrow. Thank you.

CHAIR DRYDEN: Thank you for raising this further issue. We will have a briefing from the geo TLD group. I don't know whether they will raise this issue, I suppose

they could. Okay. You seem to think they might. So this will give us some opportunity to hear from them and reflect on this issue further, and then in terms of whether we raise it tomorrow or whether we raise it as part of this other set of issues, list of issues that we are creating to come back to as a GAC, we can think about how to -- how to treat this. But I understand this as being an RAA issue, is that correct? Or am I -- could you clarify?

NETHERLANDS: It is a registry agreement problem.

CHAIR DRYDEN: Ah, registry agreement. Right. Okay. So that helps. Thank you. So I can put the right title to this, registry agreement.

All right. So next I have a request from Belgium, and then I will move to close the speaking list so that we can receive our briefing from the geo TLD group. So Belgium, please.

BELGIUM: Thank you, Madam Chair. I just wanted to take the floor to express our support to Germany's and Switzerland's positions regarding this community applications. We have the support of the communities in this regard, even when they have not been approved. We also support the U.K.'s position regarding the need to define more accurately what advice is expected from the GAC with regard to the fact that we are not in a position to control the implementation of safeguards.

And finally, we would like to discuss the importance of having the support of the political authorities within the framework of geographical names applications, the importance of having the local authority's support when it comes to applications regarding geographical domain name. Thank you.

CHAIR DRYDEN:

A quick last look around.

Okay. So we will continue these exchanges tomorrow morning at 9:00. So what I'm hearing is confirmation that we have a discussion planned and an agenda agreed with the gTLD committee for our exchange tomorrow to talk about category 1 safeguards as well as it relates to closed generics and plans around that. And as well the issue of protecting IGO acronyms. And then in addition, we have additional issues identified where we might need further GAC discussion. If we can do that tomorrow morning, then let's make use of that time. If not, we will find time to further discuss the issue of the advice we gave on community applications and what we intended, in fact, with that advice. And as well, the issue of singular and plurals of the same string, and again, our advice was accepted there where we asked the board to look at this issue and they did, and just to be clear, they -- they made a decision. There was a resolution saying that they would not do anything particular or make changes to the guidebook to deal particularly with this issue. So now it's being proposed that the GAC may want to look at this again and provide further comments and advice, so I also have that on the list. And as well the issue of registry agreements, and particularly a circumstance where an applicant would have a conflict or

potential conflict with national laws and how that would be treated based on how the -- the registry agreements are currently formulated. So that's where we are today.

We will continue in this manner when we continue at 9:00 tomorrow and before we meet with the gTLD committee. So I'll just check that our presenters are here from the geo TLD group. Perfect. Okay. So we'll move to have that briefing now. And just take one moment. Okay. All right. So we have a deck, and to my right is Dirk who will be giving us the briefing today. So please, go ahead.

DIRK KRISCHENOWSKI:

Yeah, my name is Dirk Krischenowski. I'm managing director and founder of dot Berlin, the initiative for the Berlin top-level domain name, and I'm speaking here now on behalf of our geo TLD interest group. We have so far, and I would like to thank Heather and the GAC members to invite us to speak to you and talk to you. And we much appreciate this opportunity to discuss some points with you. Some have been already addressed in the afternoon, and we would give some more briefing and input on the points in the following slides. Next slide, please.

The slides are who we are, the concerns with the registry agreement, our PM requirements and the formation of our geo top-level domain name constituency. Next slide, please. Who we are. Next slide. Yeah, this is quite small, but it gives an overview over all the top-level domain applications we have seen in this round. And you see where are many from, but I think we're from all ICANN regions. We have geo top-level domain applications there. And I would go next slide in more details.

So as the group of geo top-level domain names we thought we should define geo top-level domain names a little bit closer so that everybody knows who we are. And we said geo top-level domain names are those who are geographic names like dot London, dot Paris, or dot Berlin, some geographic identifiers or abbreviations like dot Rio or dot NYC, or geographic indications like dot (indiscernible) or dot Irish or dot Catalonia and some others. And geo top-level domain names absolutely need to have documented support of their local or relevant government and authorities. This is essential as well. And a third point which would make up a geo TLD is -- the purpose of the geo TLD is to indicate and identify domain names with a geographic origin. This is somehow important because there are some geo TLDs which recently became geo TLDs by the geo TLD panel. And we -- our group consists at the moment of 50 applicants for geo TLDs out of 76 total geo top-level domain names. That's our group. Next slide, please.

The concerns with the registry agreement. Next slide, please. A short slide, but I think this reflects the discussion in the afternoon. We think potentially most of us as geo top-level domain names think that the registry agreement really overrides the national legislation, especially in the privacy and data retention policies, like the EU Article 29, and we see some potential problems facing us with the consistency of the UDRP and local dispute resolution policies which several geo top-level domain names have. And I mean with local dispute resolution policies are not only those implemented by the national legislation but implemented by the geo top-level domain itself. We have this already in some ccTLDs, these local dispute resolution systems, and we would be happy to discuss this with you and we would like to -- like you to address this

topic, especially at the GAC board -- at the ICANN board and the ICANN staff so that we have a solution when we go into the contract negotiation phase and sign the contracts with ICANN. There's one slide, please.

The RPM discussion. It's a little built complicated. Please next slide. ICANN has said oh, this is not -- not very good to see, but ICANN has said there should be no registration phase prior to the trademark house clearing -- clearinghouse phase and these are the most models ICANN has. On the top you have the trademark clearinghouse phase and then trademark clearing -- trademark claim service. Afterwards general availability comes, and if a geo top-level domain name, a city or a local government wants to have its local face, ICANN says you can have this limited registration phase in number 2 and 3 before it comes to general availability. And what does this mean for cities? We like to have an example on that. Please next slide. Let's say -- a hypothetical example but could fit, we have the city of Paris having -- want to have a local governmental face where the city of Paris registers Metro dot Paris and police dot Paris. These names would then go in this phase to the city of Paris. Then there would be the TMCH phase and the general availability. Everybody's happy. City has its names. And the other phases can run properly. But this is a proposal of Paris, and if we have on the next slide, please.

>> [ Speaker is off microphone ]

DIRK KRISCHENOWSKI: Ah, yeah. On the next slide, the proposal of ICANN says the TMCH phase should be first and that would mean that Metro dot Paris would go to a big company like Metro AG, a very big GAC concern and let's say the police dot Paris would go to the very well-known Police band which you probably all know. And both names would be gone even before the local government phase would start. And there's probably no chance to avoid this. This is an example where our problems raised from. On the next slide we have summarized these topics. It's first prioritization phase and we would like to have -- or ask for that governmental reserved names should trump the TMCH phase. So the government should have -- the local government and probably national governments should have the ability to reserve their names or register them actually in -- before the trademark clearinghouse sunrise phase starts. And priority should be given to those registrants that have a nexus with a geo top-level domain name, let's say to Paris, to Berlin, to Barcelona or to other cities. That's what we are asking for. And second is, at the moment the RPM requirements say there can't be any names online before the trademark clearinghouse phase has been finished. And we think it's essential for the cities and regions, that key partners in these geo top-level domain names and by this I mean the city marketing or the zoo or some other public institutions as well as well-known organizations in the city should have the ability to launch their name before the trademark clearinghouse phase. This is essential for marketing the TLD. Imagine you want to launch a TLD with a trademark clearinghouse phase and you can't even do proper marketing with some good key partners projects which are already there and show the public what you can do with the TLD. And secondly, the launch phases could be different or should be different to illegible registrants. Next slide,

please. Yeah. Then we have the geo top-level domain constituency which is the third point we would like to address. Next slide, please. We are -- at the moment here's the picture from the GNSO and we are going to ask for a constituency within the registry stakeholder group. Next slide, please. And this group consists today of 22 gTLDs like dot com, info, org, info, travel, jobs, Asia, cat and others, and the new gTLD applicants interest group. And what we ask for -- next slide, please -- is to have, along with the brand constituency which has been proposed by many brands, gTLD applicants in Beijing along with those guys who want to ask for geo top-level domain constituency which represents our view and the intake group should still exist as a group of interested parties. And on the last slide, we have a brief mission statement of the geo top-level domain constituency, should as other constituencies represent interests of the geographic top-level domain names, promote cooperation, networking, and other sharing among its members, stakeholders, and within ICANN, ensure that policies are consistent with geographic and local communities, vital interests, and should give guidance to future applicants for geographical top-level domain names. These were the topics I'd like to address with you, and I would be happy if we, as I have two -- two other members of our group with me from Paris and from Africa and Cape Town, Joburg, and Durban, to discuss these points with you.

CHAIR DRYDEN:

Many thanks for that presentation. So are there any questions that GAC members have about the concerns identified by the geo applicants? So I see Paraguay and Portugal, please.

PARAGUAY: Thank you, Madam Chair. I just want to know if we can have a copy of this presentation sometime? Thank you.

DIRK KRISCHENOWSKI: Yes, for sure.

CHAIR DRYDEN: Okay. Portugal, please.

PORTUGAL: Thank you. Well, I shall talk in Portuguese because we have translation but I don't know -- (audio problem). Or not. Or I can wait. Or I can speak in English because it's late.

[ Laughter ]

Well, I'd like to thank you for this -- this presentation. That for me was the most important part of this afternoon. So thank you very much. I'd like to better understand why you set up this constituency, what was the reason behind? So what did you make to see that you -- you would need to be together? And if you -- it has this -- something to do with the fact that ICANN is not really supporting your interests. Thank you.

DIRK KRISCHENOWSKI: Okay. The reasons why we are doing this, I think we are -- we are quite different from the rest of all new gTLD applicants due to our nature. We all have support from the relevant local and presumably also the

national government in this case. And if you have seen, we have local topics which are really just not affecting the rest of the world but this local community that has applied for its name and with the local community there's -- there's always local government. And this local government has certain interests to use its name and to have its name as good in the root as the ccTLDs. Let's say they have their particular interests as well. And I think the geo TLDs are much closer to the ccTLDs like to the geo TLDs in a certain way, but potentially fits still in the registry stakeholder group because they have a contract with ICANN. Yep.

CHAIR DRYDEN: Thank you. Netherlands, please.

NETHERLANDS: Yes, thank you, Heather. And thank you, Dirk. I think it's very, let's say, we cannot plot this new constituency because I think many of you geo TLD applicants went -- applicants in the geo group were one of the first movers, let's say, in the gTLD process. I think you also from Berlin, I recall that you had many years of moving things around, trying to push things in the good direction in ICANN and I think it certainly helps the process.

One thing I would like to expand maybe more on your side is this, let's say, registry agreement problems which I have heard from two of my applicants from our country which is dot police and dot Amsterdam. I'm a little searching about what -- what's this problem means for you in

practice. You mentioned (indiscernible) and privacy as being a potential problem in the RA agreement. Thank you.

DIRK KRISCHENOWSKI: Yeah, I think as absolutely a practical compound, when it comes to WHOIS, the ICANN contract asks us to publish all the WHOIS data including fax, telephone, and e-mail address, and this is not in line or in conflict with legislation in the European Union or in Germany or in Netherlands or the member states. There they have all different systems, but no one has, I think, the full ICANN -- all the details published for the registrant. I think some -- some ccTLDs might even have near too close a WHOIS system and that brings us to the first where we started to the first lawsuit immediately when we start by publishing all these data. That is I think not what we want to be dragged into lawsuits the day after we have signed or brought the first WHOIS entry online.

CHAIR DRYDEN: Thank you.

Do you have in mind a particular solution to that issue in terms of the registry agreements?

We covered, I think, a similar issue when we talked about the Registrar Accreditation Agreement earlier because we have had to acknowledge that there are conflicts that can arise with national legislation, and it's not a new issue, as such. So if you could elaborate on that.

DIRK KRISCHENOWSKI: Yeah, but it is an issue which is still very important and the first geo top-level domain names are going -- could go potentially online in the a couple of, let's say, two or three months from now onwards. And we would like you, as a GAC, to address this topic, and we'll also discuss this with ICANN, but we want to have a solution where we can live with in our particular situation and with national and -- yeah, national legislation or EU, or other legislation which is there.

CHAIR DRYDEN: Okay. Thank you.

So I don't see any further requests. Well, Switzerland, perhaps, and then Italy. Okay.

SWITZERLAND: Thank you, Chair. I'll be brief.

Just to support what the Netherlands and others have said. We think this is a useful thing, and I will not recall, like I did not recall in the brand registry meeting that we had the idea of categories some years ago. And it obviously makes sense because they are very different.

Just one point about the sunrise phase and the need for local constituencies or local specific needs that should reasonably come before the sunrise. I think this is a key point that is very important for many of the geo TLDs, and I want to support this issue that a solution should be found and that ICANN should be flexible in finding a solution that makes sense for geo TLDs.

Thank you.

CHAIR DRYDEN: Thank you, Switzerland.

Italy, please.

ITALY: So you say that 50 of the 76 geo names are associated with the new constituency. And my question is, first of all, do you have any information about the withdrawal of some of them? I'm asking this because dot roma is one of these 76, and I can assure that they never, the top-level domain, limited, received the support from the City of Rome. And I'm surprised that the name is still there and they didn't renounce or withdraw the application.

So, but in any case, I would like to know if you contacted all the 76 just to share the problems with your organization.

DIRK KRISCHENOWSKI: Yes, we have contacted all geo top-level domain applicants to join our group, and we have, at the moment, 90 -- some 92 persons on our mailing list, which is running since I think the meeting in Toronto. So a pretty long time. And we have been organized and held meetings in between. The last meeting was hosted by the City of London in London two weeks ago, with over 40 participants from all over the world.

And so we have good contact, and informed them also about constituency formation request and all these things which come up with geo top-level domain names. So we try to have a very fair, transparent and open process in this matter.

Regarding to some of the geo top-level domain names which might have no support letter, at the moment I'm not the right person to talk to. They are still in the list of applicants and they are not withdrawn, so I can't say anything else as reflecting on this list which is published by ICANN.

CHAIR DRYDEN:

Thank you. Okay. So at this point I would just note -- Germany, did you have comments? Please.

GERMANY:

Yes, thank you. It is a simple question in this respect. I just wanted to know how you make sure on this protection of city-specific names, you want to establish a list on this, how you want to make sure that you avoid some legal challenges maybe imposed by trademark infringements. Because, on the other hand, you have trademarks that you probably may infringe and that may be also have legal consequences. And in this respect, it will be the registry who now takes over the responsibility for this -- for developing a list that contains maybe also trademarks from other regions and jurisdictions.

DIRK KRISCHENOWSKI:

I think lawsuits in this matter can't be -- can't be avoided. And these examples here come from the real world. The metro company, the big German one, they sued the Paris metro on the metro.com -- or help me. Yeah, metro.com and metro.FR and other names, and such lawsuits or legal things can't be avoided.

This will happen, but I think we have a very clear legislation in the countries how to work with these names. And I think when a city asks for metro.paris or police.paris, I don't see any company or other party getting into this name or getting this name.

Yeah.

CHAIR DRYDEN: Your colleague from the geo TLDs would like to speak.

NEIL DUNDAS: Thank you. I'm Neil Dundas from the dotAfrica applicant as well as three South African cities.

I think just to answer that specific question, the trademark holders have always got alternative dispute resolution. There are mechanisms designed to address trademark issues post delegation.

So if there is a domain that is allocated to a local government authority, such as metro, and the person that holds the trademark for metro believes that their marks -- their trademark rights have been infringed, they can always use the UDRP or some process like that where they would have to prove the name is abusive, essentially. And that would be very difficult to do against a legitimate use such as metro for the City of Paris.

So I think there are catch nets for the protection of trademark rights post the sunrise process.

But from our perspective, if you are looking at a localized instance, the development of reserved name lists not only for our cities but for our continent is a very time-intensive and very lengthy process. We're going to have to approach many, many governments in Africa, we're going to have to coordinate those efforts, filter down, build up this list. It might be quite an extensive list ultimately. And I'm sure the same would apply for some of the city names.

But I think what we're asking for is that we sensitize ICANN to be flexible when we approach them on these issues because, at the moment, the issues are still in a gray area. We cannot go ahead and invest all our time and resources on developing these lists to only find out in the next few months that the sunrise process, the trademark clearinghouse process trumps them.

So we need to start sensitizing ICANN to the fact that geos are developing these lists and these lists have the support of local governments and authorities and that they should be given due respect and due regard when they are published, and certainly should have priority above trademark rights.

And of course there's an element of reasonableness there. The geo TL applicants will employ reasonable measures to ensure sure that the lists are within reasonable bounds.

From our perspective, just a last point is on the rights protection mechanisms. For a continent like Africa, which is a developing region of the world, concepts such as the trademark clearinghouse are exceptionally difficult processes to create awareness and educate the local businesses and trademark holders on.

So we would like to see applicants have the flexibility to introduce their own localized systems to address trademark validations and verifications so that local participants can more effectively participate in the sunrise process.

This is an effective request. We want you to direct ICANN to say the trademark clearinghouse is fantastic for general protection across all gTLDs, but if we really want to promote and make our geo TLDs successful, allow the applicant some flexibility to implement their own processes, with the trademark clearinghouse as the fall-back position. But let us do something that we know can cater for the local communities we are trying to serve. And I think that's another issue we need to sensitize ICANN on, is when it comes time to negotiating these agreements, we're going to want them to see that flexibility is needed when they approach the geo TLDs.

We have local stakeholders such as governments involved, and there's a lot of thought and deliberation that has gone into this process, and ICANN must respect that and not simply push us to the back of the queue and then negotiate the agreements with us.

Thank you.

CHAIR DRYDEN:

Thank you.

So one final -- two final speakers, Netherlands and Norway, and then we need to conclude.

NETHERLANDS:

Yes, thank you, Heather. This last remark I think is very essential, what you made. And it proves for me that although there is -- let's say there is advantage of having a one size fits all, in this case I think one size fits all doesn't do justice to all the different kind of applications. And would also even make one extra example. I think your examples are very valid.

For example, we have national police applied for, polizei, dot polizei. It would be, to be honest, very ridiculous to them to have a clearinghouse mechanism to have commercial entities reserve names under polizei. So it completely doesn't make any sense.

So we have -- I think ICANN should really have, I should say, the flexibility to have certain applications, and I think the geo group is a very specific category to have an exemption to this rule, an adapted clearinghouse mechanism.

Thank you.

CHAIR DRYDEN:

Thank you. Norway, please.

NORWAY:

Thank you. This is just out of curiosity. Do you have any knowledge on relevant governments' involvement in the running of the geo TLDs? Like do you have like a new member list? Have you got many high demands from governments or are most of the members just got an approval, a letter of approval without any terms and conditions?

Thank you.

FABIAN:

Hi. My name is Fabian (saying name). I am working for the dot Paris project. As an example, the City of Paris is itself the applicant. So it has applied itself as the City of Paris, the city government for the TLD. And as far as running the TLD, it will be very closely involved in policy definition. So for instance, the TLD's launch policy has been designed with the City of Paris, and it's today put into question by those rules that ICANN has published.

But to answer your question more generally, I think there is a balance of the situation within the geo TLD community. There are those applications where the local government's involved. For instance, in France, out of the five geo TLDs, we have three of them that are the actual local government and two of them, two others, that are actually - - sorry, it's one of the four that is not-for-profit which has support from the relevant authority.

So in our group we have a balance. We could get back to you with numbers, and to be precise. But we do have relevant government involved directly in applying and in running the TLDs.

And, for instance, to come back to the example of the City of Paris, it will be the one -- it's envisioning to be the one signing the contract with ICANN.

DIRK KRISCHENOWSKI:

And we have a roster of our group where it's -- where we can put on, if it's a local government who is applicant or private entity or association or something like this, we can provide you with this list, certainly.

But it's like -- it's a colorful mix, like the ccTLDs are, with every kind of legal entity running a TLD. It's the same with geo top-level domain names.

CHAIR DRYDEN:

Okay. Thank you.

So I would note that we have the issue of registry agreements and geos on our discussion agenda in the GAC so we will be coming back to this issue. And I wonder whether it would be useful for us to ask for some sort of briefing about the registry agreements and, in particular, these issues from staff, if we can manage to schedule it to further inform the GAC returning to this topic.

So thank you for coming to present to us today. And as I say, we will be looking at this further at our meetings here.

So for the GAC, we will conclude here and reconvene at 9:00 a.m. tomorrow. So have a good evening, everyone.

Thank you.

[ END OF AUDIO ]

DURBAN – GAC Open Plenary 4  
Tuesday, July 16, 2013 – 10:30 to 11:30  
ICANN – Durban, South Africa

CHAIR DRYDEN:

Okay, everyone. If you could take your seats, let's get started again. Okay. All right. So welcome back, everyone. Just a few organizational points to keep in mind. We're circulating an attendance sheet. So if you can please fill in the attendance sheet to help us track who is here. Usually Jeannie's very good at being on top of everyone that has joined the meeting a bit later than when we started on Saturday, but she's not here, so let's do the attendance sheet to make sure we can keep a good record of who is here in attendance and participating in our meetings.

Also, a reminder that at the end of today there is a cocktail with the board, so a Board-GAC cocktail that we're all invited to join. And this is a very good informal opportunity to talk to some of our board colleagues and have an exchange with them. So I would really encourage you to come as well. The ccNSO is having its tenth anniversary and we've really come to have good working relations with our colleagues in the Country Code Name Supporting Organization so I know they would really appreciate us joining them to celebrate this event on their tenth anniversary. And so that we are able to attend the cocktail with the board, there will be special buses arranged to take us to the ccNSO anniversary event so that this can be made as smooth a process as possible for us. So again, I encourage all of you to take advantage of these opportunities to socialize and join in the celebrations with our country code colleagues.

So with that out of the way, just some notes on the agenda. As you know, we were planning to address the outstanding strings discussion in this session, but more time is needed for consultations with some GAC members, and so we have notified you via the GAC list that we have moved this to Wednesday, I think it's at 11:30 a.m. when we will have that meeting. But I do think that if we can continue this process of consultations, if I can talk to a few more colleagues and some that I have committed to come back to, then it will allow that session to go more smoothly and for us to understand how that will be conducted in advance, and I think that is in everyone's interest, given that there are some sensitivities associated, in particular with discussing those issues and those remaining strings, in that session.

So as an alternative -- Brazil, please.

BRAZIL:

Good morning, Chair. Thank you. Just related to the shift of the agenda that you just announced and sent us yesterday evening, or afternoon, sorry, I would like to ask the Chair to review this proposal because in our case we brought the vice minister today to the GAC meeting just because of this discussion. And he's leaving tomorrow early. So I would like to ask the Chair and our colleagues to review this proposal to bring the issue to the same agenda that we have received in the beginning of our work some weeks ago because we have planned our delegation and the trips based on that agenda. If you could review it and if we could have the support of our colleagues, the Brazilian delegation would appreciate it.

CHAIR DRYDEN: Thank you, Brazil. So we did not receive any objections via the GAC list about this change, but I did consult with the vice chairs about this before making the change to the agenda and as I say, it's going to help us to have more time. Frankly, I just don't think we're all ready for the discussion today. However, if you are prepared to make a statement, then perhaps we can receive the statement now and then address these issues tomorrow as proposed. Brazil.

BRAZIL: Madam Chair, I made -- I'm making a statement. I would like to propose to the plenary to review this decision. If you could put today the decision of the plenary.

CHAIR DRYDEN: Thank you, Brazil. And ( audio problem ) I have proposed to move it to tomorrow. I do not believe we are ready for discussion of all the strings that are on the list. Consultations have been ongoing, my consultations have been ongoing, and we need more time for that. However, if you wish to make a statement about a string that is on that list, then we can hear that statement now. I think that would be a way to proceed. Okay. So I see Peru, Argentina, and the EU Commission.

PERU: Good morning, Chair, good morning, everybody. We would like to support the request from Brazil. Any GAC member has the right to ask for the review of a Chair decision, with all due respect. In our case we haven't been consulted, being main -- a country mainly interested in the discussion of dot Amazon, among other strings, and we are concerned

about the fact that this shift in the agenda may not allow enough time to have a thorough discussion of what is the main business of the GAC. So we would like to endorse what Brazil has requested and, of course, join the plea for all GAC members to review this decision of the Chair. Thank you.

CHAIR DRYDEN:

Thank you, Peru. It's unfortunate that I was not aware of your views before we sat down to have this session. It would have been preferable to understand your concerns and to look at a way forward before we sat down in the plenary. So you may feel that you were not consulted, but neither have I been consulted in terms of your concerns. And of course, I -- I am happy to take note of them. Okay. So Argentina, you are next, please.

ARGENTINA:

Thank you, Madam Chair. Argentina shares the same concerns as Brazil has expressed and also Peru and would like to remind you that we did a statement in the name of several of our countries of the region that we were worried about specific strings in that list of strings that have to be reviewed. Also, I would like to remind you that in Beijing the agenda was changed and was shifted to Thursday, some work that has to be done, and some of us were already scheduled to leave that day. So we would like to have more time to discuss some issues that we think are substantive important for our region. Thank you.

CHAIR DRYDEN: So as I understand it, the concern is that we won't have enough time. I believe we will. And I think the question that you are particularly interested in, the governments that have spoken so far, will be addressed very quickly. And if we can discuss it outside of this session, then I think that would be useful so that you know how it's going to be handled and what you can expect. And this is what I mean by wanting to make sure that all of the consultations in the corridors are complete so that that session can actually go very quickly and smoothly, in fact. So next I have EU Commission.

EUROPEAN COMMISSION: Thank you, Chair. I understand your concern of moving on quickly and I think it might not be the right moment to come to definitive conclusion, but I think one of the words that was also mentioned in the opening session is "empathy," far apart from efficiency and effectiveness. And I think if the delegates feel strongly about having some discussion at this stage, I would like to support the Brazilian proposal to have at least first discussion at this stage of the meeting. Thank you.

CHAIR DRYDEN: Thank you, EU Commission. Okay. Iran, you're next.

IRAN: Thank you, Madam Chairman. Yes, we understand that you have consulted some colleagues. May not be -- you may have not been able to consult others. However, we have the distinguished -- the deputy minister of Brazil here. He wants to follow the questions. We have full respect to all of our colleagues and we have to work together. I suggest

that instead of discussing an hour what to do with the agenda, you continue your consultation this morning and the provision that this afternoon you provide opportunity, at least strings that Brazil and some other countries are interested to be discussed while the deputy minister is here. So we should, I think, work collectively and friendly and leave a little bit of time, maybe afternoon you can do that. Perhaps at least you consider the possibility that give priority to these strings while our distinguished colleague from Brazil is here. We don't want to disappoint anybody and we would like -- because he might have very heavy agenda, have to leave here, and that is all. So we also support the proposals of other colleagues that have made that. We need to continue that and take into account of the concern expressed our -- by our colleagues. That is point one.

Point number two, Madam Chairman, not ask for the floor again, we have sent you a letter and we would like that tomorrow when you discuss you provide us opportunity to briefly present the thrust of our letter. Thank you.

CHAIR DRYDEN:

Thank you, Iran. Chile, please.

CHILE:

Thank you, Chair. Well, we circulated a document, a few of the countries of our region, the first day of this meeting and we were ex -- what you expressed regarding that statement was that you -- that was going to be discussed today. So I think that we could -- if that's good for everyone, we could at some point talk about those topics because we --

there are relevant countries here that have concerns, so I think it would be important to hear in this session what's going on and where we're standing at this point. Thank you.

CHAIR DRYDEN:

Thank you, Chile. Okay. So we have some time now before we break. So for those here present that would like to comment on the outstanding strings, let's do that now. I would like to keep the time in the agenda for Wednesday as well. But as has been proposed, this is an opportunity for at least some initial discussion, taking advantage of those that are present and giving them an opportunity to make their comments today. All right. Brazil, please.

BRAZIL:

Thank you, Madam Chair. I would like also to thank our colleagues that support our request. And I would like to emphasize the importance of having this discussion today as well as were planned a few months ago. So I would like to propose that we follow the suggestion of the Iran representative in having this discussion today after whom I believe at 2:30 today.

CHAIR DRYDEN:

Okay. We're looking at the schedule, and we have a session planned with the ccNSO at 2:00. So depending on whether we can make changes to that, we may or may not be able to have the discussion at 2:30, as you describe. But we do have the time now, if you did want to make comments, as I say, before we break for lunchtime. So India, please.

INDIA:

Thank you, Chair. Let me introduce myself. This is my first intervention at the GAC. I'm Ajay Kumar, representing government of India, and I would request the indulgence of the GAC plenary to consider a request which India has with respect to a couple of strings. These strings we had actually issued our early warning way back as per the time schedule and we had also engaged in the process of dialogue and interaction with the applicants with respect to these strings. And we were happy to work with them and to come out at an amicable solution. Unfortunately, however, while the discussions were going on and we were under the impression that we would be able to achieve a resolution, things have reached a situation where I don't think we have been able to reach a situation where we can agree to these gTLDs. I know this is beyond the deadline, but the request that I have for GAC's consideration is these two gTLDs, one is dot Indians which is very close to the ccTLD for India and the other one dot Ram which is the biggest Hindu deity in India for the biggest chunk of population in the country. Both of them have very serious concerns within the country. This matter has been considered in our government both with various stakeholders as well as with various ministries of the government and we realize that it is difficult for us to agree to these gTLDs. I understand that we are actually behind time and GAC has been proceeding and we greatly appreciate the great work which GAC has been doing, but the fact of the matter is that if we were to ignore the objections that we have today, we actually have a situation which will need to be addressed and, therefore, I think considering the large number of people who are expressing the concerns with respect to these

application, the GAC may deliberate and find out a way to resolve these objections.

We cannot have a process really which would lead to a situation which creates -- leads to a problem. I mean the whole process through which the GAC has been going on over the last so many months has been to find out a way by which the gTLD process can proceed smoothly as well as we are able to find -- address the genuine concerns of the governments. And here we are in a situation, despite our best efforts, despite the interactions we have had at different times with the applicants, we have not been able to resolve.

So I think given the magnitude of the problem and the sensitivities conveyed at the highest levels from the government of India, we would request the GAC to kindly consider taking this matter and raising it along with the rest of 14 strings that have been included in the short list, the Beijing communique.

Thank you.

CHAIR DRYDEN:

Thank you, India. Iran, please.

IRAN:

Thank you, Madam Chairman.

I fully respect all distinguished colleagues in GAC to make every statement, but perhaps for the sake of time, perhaps possibly we just limit this period of time, one hour and so, to the Amazon discussions because our distinguished colleagues have difficulty for tomorrow.

While we fully respect all colleagues to make every point, at a later time we will come to the discussion of the strings. So this is exceptional case of Brazil because they cannot stay here tomorrow. So if all distinguished colleagues agree, you limit the discussions to that.

Thank you.

CHAIR DRYDEN:

Thank you, Iran. I'm happy to hear initial comments and discussion from any of those governments that are interested in doing so in terms of the outstanding strings that we have identified, but certainly Brazil and others may wish to comment specifically on Amazon. But I like this proposal to have an initial discussion now to make use of the time we have.

Okay. Peru, please.

PERU:

Thank you, Chair.

So as we understand, and our thanks to our GAC member of Iran, we are to start the discussion on dot amazon at this moment.

In that sense, let us remind that we have already distributed a statement on what the position, not only of the countries but of the whole region is in this regard. And if you allow us, I would like to ask our colleagues from Brazil to make the first presentation, and then we come -- we'll come back to complement what they are going to say.

CHAIR DRYDEN:

Thank you very much, Peru.

Brazil, are you requesting the floor? Please, Brazil.

BRAZIL:

Thank you, Madam Chair.

So we would like to, first of all, thank you, the GAC and the Chair, to accept our request to start this conversation today, to take advantage of the presence of our vice minister here, whose presence here expresses the wide and **deep concern** of the Brazilian society with the solicitation of the registration of dot amazon.

As you may know, we had a very deep, long and good discussion in the Brazilian Congress about this. Our Congressmen expressed their concern about the **risk to have the registration of a very important cultural, traditional, regional and geographical name related to the Brazilian culture.**

We share this opinion with all of the countries in the region, so Peru, Colombia, Venezuela, Ecuador, Suriname. All of them in a meeting in the Amazon Treaty Organization last April produced a document, a declaration related to the dot amazon, also expressing their concern to **the registration of this very important name to the Brazilian society.**

Afterwards, we had a meeting in the ALAC which comprised the Latin American and Caribbean countries in May. The same as well, all the countries supported the Brazilian, and the Amazon countries demand to the GAC, to our fellow countries to send an advice to the Board to reject the registration of dot amazon for the same reasons.

As you may know, the Amazon region only in Brazil comprises 50% of our territory. More than 30 million people live in this region in Brazil.

We have one of the most important bio systems in the world with a very huge sort of fauna and flora. And this concern is also shared by all the Amazon countries.

Besides the Latin American, Caribbean countries, besides the Amazon countries, within the society we had a very meaningful reaction against the registration of dot amazon. We have a declaration issued by the Internet Steering Committee, the Brazilian Internet Steering Committee, which is a very democratic and multistakeholder platform which takes care of the Brazilian policy on Internet. We had a very huge reaction from the civil society which is organizing a document signed by thousands of people to be sent to the GAC board -- to the ICANN Board reacting against this solicitation.

So in a certain way, we fulfill the requirement, which was posed by the Beijing communique. I would like to read the exact text that we have approved -- or, sorry, because I was not here, you have approved in Beijing four months ago, which says, "The GAC advise the Board," so it's already a decision from the GAC, "that in those case where a community, which is clearly impacted by a set of new gTLD applications in contention has expressed a collective and clear opinion on those applications, such opinion should be duly taken into account together with all relevant information."

As you may remember, on Saturday or Sunday -- Sunday, Peru, Brazil, Argentina, Chile and Uruguay sent you a letter where we explained all this reaction from the society, from the Brazilian society, from the

Peruvian society, from the Brazilian Congress, from the Brazilian Internet Steering Committee. And we would like to come here again to ask the GAC members to support a GAC advice to the Board in the same -- in the same terms as we have approved last meeting in Beijing about dotAfrica.

Besides that, we think that the principles approved in 2007 by the GAC as well comprise our demand on this issue.

I would like to inform all of you that we have very good conversations with the Amazon, Inc. We understand their business plan.

All of our conversations, we have met at least three times, were carried out with a very faithful willing from both sides. Nobody thinks that each of the other side has bad faith on this.

We understand their business plan. We understand they're willing to make a good job. But for a matter of principle, we cannot accept this registration. And we have expressed to them this position very clearly, very politely, and very frankly.

So I would like to ask my vice minister to complement these initial words. But I would just ask you again, reinforce the Brazilian demand to the GAC members to approve a rejection on the registration of dot amazon by a private company in name of the public interest.

If the chair allows me, I would like to ask my vice minister to talk.

BRAZIL:

Thank you all for this support to our request. I would like to add two points to the comments made by my colleague. The first one is that this

domain string dot amazon, it affects a large number of communities in the Amazon, which is based on -- which covers eight different countries in South America.

I would like to recall what was said yesterday in the opening speech by the commissioner of the African Union where she said the importance of protecting geographical and cultural names in the Internet.

So I would like to ask the support of the members of GAC to reject this proposal of registering dot amazon.

CHAIR DRYDEN:

Thank you, Brazil.

I see Peru.

PERU:

Yes, Chair. Thank you. With your indulgence, just to highlight three or four points that we think are crucial for the understanding of our request.

And first, in terms of legal grounds for our request, we believe there is enough legal grounds in ICANN bylaws, in prior GAC advice, and also in the applicant's guide.

So our plea is very well grounded in the legal framework of the ICANN. That would be the first remark.

The second remark is that there is no doubt that this is a geographic name. Amazon is -- pertains to four departments of the Amazon countries. It is the department, for those that probably do not know

our political division, is the second, the second division for our countries. It is larger than provinces in our political division. And so it pertains to Venezuela, to Colombia, to Peru, and to Brazil.

Amazon, in Spanish, also belongs to cities of our countries, and Amazon in English is also a city in Guyana.

It has been allotted the three-digit code number. So it is in that 3166-2 list. So there is no doubt whatsoever that this is a geographic name. This would be the second remark.

And the third remark is that, indeed, this is a public interest issue, and that is why we are discussing this in the GAC.

There are several populations that have been involved in this, and I want to stress the fact that, unanimously, all Amazon countries and all Amazon provinces, departments, and local governments have expressed, in writing, their rejection to dot amazon.

So there is a unanimous claim, a unanimous understanding of the community concern against this registration.

So for the time being, those are the three remarks I would like to make. And of course I will be keen to come back in the discussion of any concern or any question that the members of the GAC may have.

CHAIR DRYDEN:

Thank you, Peru.

Okay. Are there any other requests at this time?

At the end of the table. Is that South Africa?

SOUTH AFRICA: South Africa, yes, chairperson.

CHAIR DRYDEN: Please.

SOUTH AFRICA: We would just like to state we support the contributions that have been made by the Brazilian delegation and the delegation from Peru.

We have similar strong concerns about the need to protect public interest and communities and cultural and geographic indicators.

Thank you, Chair.

CHAIR DRYDEN: Thank you, South Africa.

Next I have Gabon, then Sri Lanka.

Gabon? Do I have the right GAC member?

GABON: Yes.

Thank you, Madam Chair.

Gabon also needs to comment on this issue from -- it has received the comments from the Brazilian delegation on this issue, and we believe

that if this zone was validated by ICANN, this could go against the new gTLD principles developed by the GAC council in 2007.

The new gTLDs should observe the sensitivities and those terms that have a national, cultural, geographical, regional or traditional meaning.

Therefore, ICANN should reject any application related to geographical, cultural strings that have these -- that pose these kind of problems.

SRI LANKA:

My intervention will be very short. This issue of dot amazon has reached our foreign ministry and has gone to the highest level of attention between discussions with Brazilian government on a lot of bilateral trade related issues. And in view of the comments made by the Brazilian as well as the Peruvian delegate, I wish to record a highest and the strongest support for what has been stated by our Brazilian, Peruvian delegates at this session.

Thank you.

CHAIR DRYDEN:

Thank you, Sri Lanka.

Next I have Trinidad and Tobago and then Russia.

TRINIDAD AND TOBAGO:

Yes, thank you, Madam Chair. Trinidad and Tobago supports the position of Brazil on the dot amazon issue.

Thank you very much.

CHAIR DRYDEN: Thank you. Next I have Russia.

RUSSIA: Thank you, Madam Chairman. I will speak in Russian, so please use headphones.

The Russian delegation would like to express its support, its complete support to the claims that were given by our colleagues from Brazil and Peru. We also share their concerns in using geographical terms when registering -- when registering domains by special companies. And of course we consider that the point of view of governments has to be taken into account in these terms.

Thank you for your attention.

CHAIR DRYDEN: Spasibo, Russia.

Uruguay, you are next, please.

URUGUAY: Just a very short speech.

I want to speak as chair of the ministerial meeting of the Latin American, Caribbean countries. The support for Patagonia and Amazon claims were in the strong words we could make in this event. It was a ministerial one. And we find there's no more for us to say. That's our opinion on the item.

Thank you very much.

CHAIR DRYDEN: Thank you. Next I have Uganda.

UGANDA: Thank you, Madam Chairperson. I want to thank you in supporting the statements made by the Brazil and other countries who are affected by Amazon like all of us. And I wanted also to ask you, Madam Chairperson, many of us are from developing countries. We're going through a process of generating similar strings which may be of concern to us.

So I'm wondering should we always have to come here and make statements like this, or there's going to be a general way of protecting those strings that we think are sensitive to us. Just a secondary request to hear from you. I'm not a regular participant in this meeting, but I follow. And I thought that the GAC advice there that was given would be enough to protect. But I just want to hear again whether this is going to be a procedure that, if we feel strongly that there's something that we need to protect, we have to come here and talk about it. Thank you.

CHAIR DRYDEN: Thank you, Uganda. I have Australia next.

AUSTRALIA: Thank you, Chair. And thank you to all colleagues who have spoken already on this very important and, obviously, very sensitive issue for

the GAC to consider. And thank you. It's good to be followed by our colleague from Uganda. So thank you very much for raising the question about a broad process. Many of you will have seen that I've put some suggestions to the GAC list on this issue. So, first of all, I want to be very clear that the Australian government supports countries in advancing their national interest with regard to geographic names. This has obviously been an area of longstanding interest to the GAC, and there is a substantial amount of existing GAC advice on this issue.

The situation that we face today is that some governments consider geographic names that are not on ICANN's lists or picked up under ICANN's framework in the applicant guidebook.

And I think this is why we are here today discussing this, because there is an apparent gap in ICANN's processes and policy framework.

So, for me, my proposal and the Australian government's proposal has been to fix this gap. It appears that there are many applications in the current round that governments clearly consider to be geographic names and of considerable significance. And what we face is that there is no clear process. We have, in the GAC here, these conversations. But, in terms of ICANN's policy framework, we -- there is -- there is something missing. There is no process whereby governments and applicants can put their cases and have them heard and their criteria for resolution and so on.

So the Australian government, while not commenting on any of the applications that are before us today, broadly would like to advance the idea that the GAC suggests two ICANN that it establish a clear process to deal with this issue that would apply in this round and in future rounds

as well. I expect that many applicants in this round and people who pay attention will be sensitized in future rounds to the GAC's interest in this. But this situation may come up again. And I think we'll do ourselves a great service if we were to recommend to ICANN to put in place a clear process to reconsider the issue of geographic names and deal with it so that we do have a very clear process going forward. Thank you.

CHAIR DRYDEN:

Thank you, Australia. Argentina.

ARGENTINA:

Thank you, Madam Chair. And thank you, Australia, for bringing this comment and your contribution. Our delegation and your country had a meeting that we think it was very constructive, and we replied to your proposal.

I would like to stress a part of the applicant guidebook which is a paragraph that should be considered by companies. And I think it has been taken kind of lightly from the applicant perspective. The applicant guidebook says, in the section that talks about geographic names, "In the event of any doubt, it's in the applicant's interest to consult with the relevant governments and public authorities and enlist their support or non-objection prior to the submission of the application in order to preclude possible objections and preaddress any ambiguities concerning the string and applicable requirements."

Argentina thinks that, if this paragraph would be more reinforced or mandated by the applicant guidebook, all these problems that we're having now wouldn't happen. Because, if we had some communication

or contact from the company before, maybe we could have found a way out, which is something that could have been negotiated among countries and the company.

But that didn't happen. Just the companies went on with the application. So the applicant guidebook contemplates this event, but it has not been respected by the applicants. So we think that the GAC should stress this. And also we think that everything is written already in 2007 when the GAC, in the Lisbon meeting -- some of us were there that day -- we issued the new GAC principles for new gTLDs. And this is where all our ideas are expressed. Thank you.

CHAIR DRYDEN:

Thank you for that, Argentina. Next, I have Brazil and then Portugal. Thank you, Madam Chair. I'd like just to comment three things very quick. I would agree with Peter. I think we need to have an action in the GAC to try to cover this gap. But I don't think the gap is as serious as we think. First, because of some arguments that the representative from Argentina just raised. Because the, let's say, the obligation to search for a previous negotiations is from the applicant. The countries, they have the right to discuss in this fora, in this forum, the case is one thing. The second -- it doesn't mean that we don't need to cover the gap. I think it's useful to make an effort to cover this gap. But try to reach the question by Uganda I think, in our point of view, yes, sometimes you need to come here. Because the list, the previous list is not an exhaustive one. For example, now we have dot amazon. But in the future, maybe you can have dot sahara, dot sahel, dot nile, dot danube. I don't know if the names are there. I don't have the list by

heart. But maybe the names are not there. But it doesn't mean they're not important for national culture and traditional concerns in your countries.

So it's true there's a gap. But also it's true that the procedure is a little bit different. But it's also true that the list is incomplete.

And, just to finish my argument, I'd like to say that it is possible that some geographical names solicitation can find a negotiated solution. Maybe -- and it's the case -- we know some case where the city name, the state name, the province name has been subject of solicitation of registration. And they are -- the government is negotiating with the company or the companies responsible for the solicitation. And it's okay. But in the dot amazon, it was not possible. And it's out of negotiation.

So it's still there, the possibility of some geographical names registrations can be negotiated. We don't -- we don't put it in -- at risk. But in this specific case -- and I'm quite sure that there will be some other case. Dot africa has been a case in the past. And, in this case, dot amazon was not possible to be negotiated.

Thank you.

CHAIR DRYDEN:

Thank you, Brazil. I have Portugal and then Peru, please.

PORTUGAL:

Thank you very much.

I think it's too serious the issue we are dealing here with.

And I would like to make mine on behalf of the Portuguese government, the comments made five minutes ago by Australia and Argentina. Thank you.

CHAIR DRYDEN: Thank you, Portugal. Peru, please.

PERU: Thank you. I would like to go along with the proposal for working on any eventual gap that could be in the list or in criteria for geographic names that are not in the list of ICANN. In this case, however, I would like to stress the difference with dot amazon in particular and focus on this case in particular. There is no ambiguity in this case.

For the company that has submitted its application and it was very clear and they knew beforehand that it was there, a very vast region that was shared by several countries that the name was a geographic name as well. That was very well known by the company from the beginning. So, in this case, there was no doubt that they were dealing with a geographic name. There was also no doubt that it was a codified name because it got the three-digit code. So I would like to -- and we are ready to collaborate in this process of striking new criteria or clearer criteria, but it would work for other cases. We can -- I think that we can deal with separately. In the near future there is need to equate the situation of those names that are in the realm of the national patrimony of countries and that have cultural geographic significance. It is striking for us to see that there is a prior search on trademarks during the

sunrise period. But there is no list or no searching mechanisms for geographic names. So we shall work on that. But, again, this is not the case for dot amazon. It was recognized by the company from the very beginning that they were dealing with governments and they were dealing with a region, a very vast one.

CHAIR DRYDEN: Thank you, Peru. Chile, please.

CHILE: Thank you, Chair. We supported -- a declaration was circulated at the beginning of this meeting. We reiterate what we expressed there. We had similar concerns recently with other applications. And this can be a case for any other country, too. So we recognize that there are procedures in place and provisions in the different -- the guidebook and bylaws. And, even though they could be clarified, we were also open to define new criteria for the other cases, definitely. But we see in this case that there is factual data that's been expressed. And, even though that, that's the same their position, they've engaged in conversations with the applicant. And no solution was achieved directly in those conversations. So we believe that we need to address the specific situation now and think seriously in what we have proposed regarding the GAC advice in spite of other conversations that we could put forward regarding the improvement or clarification for further cases. Thank you.

CHAIR DRYDEN: Thank you, Chile. I have South Africa and then Iran.

SOUTH AFRICA:

Thank you, Chair. During the Beijing meeting, I think there was only one dissenting voice regarding the GAC giving advice to the board to reject the dot amazon application. And, when you look at GAC principles with regard to geo names, it is a requirement that, if you apply for a geographic name, you have to have government support, which was not the case in this nature. Also taking into account that Amazon is a trademark. But, for me, the fundamental question is: What was there first? The region or the trademark? Because I think that's very important to consider. To say that you might find -- also find that what actually informed the company's name was the region Amazon. So from that premise, I think, really, as a GAC, our job is easy to say that we should actually give this advice to ICANN to say that they need to reject this dot amazon application. And also the other thing is that we need to actually make a decision in this meeting. We cannot defer the decision to when we go to Argentina. It might be too late. So I think that, you know, for us as a GAC, we really need to apply our minds and do the right thing. Because we are here representing governments and public policy. That's what we're here to do, advise ICANN on public policy that deals with the Internet. Thank you, Chair.

CHAIR DRYDEN:

Thank you, South Africa.

Iran, please?

IRAN:

Merci madam.

[ Speaking foreign language ]

This is specific issue about dot amazon. The only reason is that our distinguished colleague -- we have addressed this issue of dot amazon because our colleague from Brazil was not able to attend this meeting tomorrow. What I'm asking is that we shouldn't make this issue too general, too comprehensive. It is not applicable to everyone. We need to discuss. We need to debate. But we shouldn't rush to get to something that might create difficulties for us in the future. That is why, Madam Chair, that I kindly asked you, with all due respect, to limit our discussion to dot amazon only. And for other more general cases there would be other times to discuss them. There are specific cases. And we have to resort to international conventions and act on a case-by-case basis so as not to be generalizing and create something that in the future will prevent us from discussing and making decisions. This is the request that we are specifically making to you, Madam Chair.

CHAIR DRYDEN: China and Nepal. China, please.

CHINA: I just want to say China supports the statement of Brazil and Peru, Argentina.

CHAIR DRYDEN: Thank you, China. NEPAL.

NEPAL: Thank you, Chair. I just wanted to comment on the conjecture from South Africa that Amazon, the company, may have got its name from the region. I recall in Beijing that the Brazilian delegation did read to us statements from the Amazon Web site confirming that, indeed, they did get the name from the region.

CHAIR DRYDEN: Thank you. Next I have Thailand.

THAILAND: Yes, thank you, Madam Chair. And I'd like to join my previous delegation to support the statement made by Brazil. I also would like to add that in -- when we talk about geographical names, in fact, ICANN also has another process that conduct in IDN which refers to the extensive knowledge of United Nations geographic names, expert on geographic names, which also recognize a Romanized country on how they define the long-term country and territory process. It's there. But in the fast track IDN and IDN consideration which is not adopted in the application guidebooks. So there is some process already there, which is sufficient, if you could have a look on the details of how they defined geographical names. And I think most of the country also support this UNG, GN. Thank you.

CHAIR DRYDEN: Thank you very much, Thailand. Okay. So at this point, I think we can pause. Iran. Would you like to --

IRAN: There is consensus on this issue. We do know that there are different viewpoints. However, we believe it is the right time to conclude. If you have the same impression I have on this situation.

CHAIR DRYDEN: At this point I think we can sum up for the moment. And this has been a very good exchange that we've had, I think, and we have successfully outlined, I think, what are some of the key issues in considering these names and there is, I think, a lot of clarity for us in terms of the concerns expressed about some of the strings that have been mentioned in this discussion. And it may be the case that we can acknowledge as well as the GAC at our meetings here -- in addition to addressing directly the question of those strings remaining on the list of outstanding strings -- that we acknowledge that in some cases there may be gaps or additional considerations, and we may want to point that out to the board when we put together our communique.

So I would, at this point, like to have us break for lunch, and we know that we have our session tomorrow where we will go through all the strings. And I do believe this has been, as I say, a useful exchange that we have had. I'm glad that we have had it. So I can see Brazil and Peru and Iran.

BRAZIL: Madam Chair, I think that we -- we have the opinions and the position of the countries here that clearly express their support to the Brazilian request to reject the dot Amazon registration, and I think that -- I don't see any reason to postpone this decision to tomorrow because we -- we

have all the opinions here today. So I would like to ask you to consider that.

CHAIR DRYDEN: Thank you, Brazil. Okay. I can see from the requests we're getting I'm pretty sure I know what you're going to say. Peru and Argentina.

PERU: Risking being predictable at this point, Chair --

CHAIR DRYDEN: Perhaps I can continue. I think we can settle this. So what I propose to do is put the question regarding dot Amazon, and then we will conclude this session. So are there any objections to a GAC consensus objection to the application for dot Amazon? Recognizing that there are IDN equivalents, this would apply to those equivalents. So I am now asking you in the committee whether there are any objections to a GAC consensus objection on the applications for dot Amazon, which would include their IDN equivalents. I see none. Would anyone like to make any comments on the string dot Amazon. I see none. Okay. So it is decided, and now we will break for lunch. Please be back here at 2:00.

[ Applause ]

[ END OF AUDIO ]

**APPENDIX D**

**APPENDIX D**

The following quotes are extracted from the attached original documents, as found on the ICANN website.

**2009:**

The treatment of country and territory names, in version 2 of the Draft Applicant Guidebook, was developed in the context of the points raised by the GAC, the ccNSO, and the GNSO policy recommendations and trying to find a balance among the somewhat contrary views. [...]

The Board raised concerns that the criteria for country and territory names, as it appeared in version 2 of the Draft Applicant Guidebook was ambiguous and could cause uncertainty for applicants. Subsequently, on 6 March 2009, the ICANN Board directed staff to, among other things, "...revise the relevant portions of the draft Applicant Guidebook to provide greater specificity on the scope of protection at the top level for the names of countries and territories listed in the ISO 3166-1 standard".

The revised definition . . . continues to be based on the ISO 3166-1 standard and fulfills the Board's requirement of providing greater clarity about what is considered a country or territory name in the context of new gTLDs. It also removes the ambiguity that resulted from the previous criteria that the term 'meaningful representation' created.

The Board's intent is, to the extent possible, to provide a bright line rule for applicants. . . . It is felt that the sovereign rights of governments continue to be adequately protected as the definition [of geographic names] is based on a list developed and maintained by an international organization.

**Source: Letter from ICANN (Dengate-Thrush) to GAC (Karklins), September 22, 2009.**

**2010:**

With regard to the definition of country names, the Board has sought to ensure both clarity for applicants, and appropriate safeguards for governments and the broad community. A considerable amount of time has been invested in working through the treatment of country and territory names to ensure it meets these two objectives. [...]

The resulting definition for country and territory names is based on ISO 3166-1 and other published lists to provide clarity for potential applicants and the community. [...]

While the revised criteria may have resulted in some changes to what names are afforded protection, there is no change to the original intent to protect all names listed in ISO 3166-1 or a short or long form of those names (and, importantly, translations of them). This level of increased clarity is important to provide process certainty for potential TLD applicants, governments and ccTLD operators – so that it is known which names are provided protection.

The definition is objectively based on the ISO list, which is developed and maintained by a recognized international organization.

[...]

[T]he Board has sought to ensure, throughout the process of developing a framework for new gTLDs, that there is 1) clarity for applicants, and 2) appropriate safeguards for the benefit of the broad community. . . . The current definitions, combined with the secondary avenue of recourse available by way of objections are considered adequate to address the GAC's concerns.

It should be noted that much of the treatment of geographic names in the Applicant Guidebook was developed around the GAC Principles regarding new gTLDs, and conversations and correspondence with the GAC on this issue going back to 2008.

[...]

During the teleconference of 8 September 2008, GAC members identified the ISO 3166-2 List, as an option for defining sub-national names. Accordingly, version 4 of the Applicant Guidebook provides protection for all the thousands of names on that list. Also during the call the idea of the GAC creating a list of geographic and geopolitical names was discussed, however, it is understood that the GAC moved away from this suggestion because it would be a resource intensive effort for all governments to undertake.

**Source: Letter from ICANN (Dengate-Thrush) to GAC (Dryden), August 5, 2010.**

Sub-national place names: Geographic names protection for ISO 3166-2 names should not be expanded to include translations. Translations of ISO 3166-2 list entries can be protected through community objection process rather than as geographic labels appearing on an authoritative list.

**Source: Adopted Board Resolutions – Trondheim, Norway, September 25, 2010**

The Board has sought to ensure, throughout the process of developing a framework for new gTLDs, that there is 1) a clear process for applicants, and 2) appropriate safeguards of the benefit of the broad community including governments. The current criteria for defining geographic names as reflected in version 4 of the Draft Applicant Guidebook are considered to best meet the Board’s objectives and are also considered to address to the extent possible the GAC principles. These compromises were developed after several consultations with the GAC – developing protections for geographical names well beyond those approved in the GNSO policy recommendations. The current definitions, combined with the secondary avenue of recourse available by way of objections were developed to address the GAC’s concerns.

[...]

*Objection Process*

The criteria for community objections were created with the possible objections to place names in mind and as such the objection process “appropriately enables governments to use this”.

[...]

[T]he new gTLD implementation to date has addressed the issues described in the Affirmation of Commitments: competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection. The issues raised by the GAC are neither stability / security nor AoC issues – but they merit the full attention of the community.

The solution that appears in version 4 of the Applicant Guidebook was developed following extensive legal research that examined restrictions in a representative sample of countries, which included Brazil, Egypt, France, Hong Kong, Malaysia, South Africa, Switzerland and the United States of America. Various competing interests are

potentially involved, for example the rights of freedom of expression versus sensitivities associated with terms of national, cultural, geographic and religious significance. While freedom of expression in gTLDs is not absolute, those claiming to be offended on national, cultural, geographic or religious grounds do not have an automatic veto over gTLDs. The standards summarized by Recommendation No. 6 indicate that a morality and public order objection should be based upon norms that are widely accepted in the international community.

[...]

Importantly, in addition to the Morality and Public Order objection and dispute resolution process, the Community Objection standards were developed to address potential registration of names that have national, cultural, geographic and religious sensitivities.

[...]

I understand that some GAC members have expressed dissatisfaction with this process as it was first described in version 2 of the Guidebook. The treatment of this issue in the new gTLD context, was the result of a well-studied and documented process which involved consultations with internationally recognized experts in this area. [...] The expression of dissatisfaction without a substantive proposal, does not give the Board or staff a toehold for considering alternative solutions. While the report of a recently convened working group still does not constitute a policy statement as conceived in the ICANN bylaws, ICANN staff and Board are working to collaborate with the community to adopt many of the recommendations.

**Source: Letter from ICANN (Dengate-Thrush) to GAC (Dryden), November 23, 2010.**

**2011:**

The Board has sought to ensure, throughout the process of developing a framework for new gTLDs, that there is a clear process for applicants, and appropriate safeguards for the benefit of the broad community including governments. The current criteria for defining geographic names as reflected in the Proposed Final Version of the Applicant Guidebook are considered to best meet the Board's objectives and are also considered to address to the extent possible the GAC principles. These compromises were developed after several consultations with the GAC – developing protections for

geographic names well beyond those approved in the GNSO policy recommendations. These definitions, combined with the secondary avenue of recourse available by way of objections were developed to address the GAC's concerns.

In developing the process for geographic names, ICANN has relied upon ISO or UN lists to assist with geographical definitions in the context of new gTLDs. The combined total of names currently protected in the new gTLD process is well in excess of 5000 names, and providing protection for "commonly used" interpretations of these names would multiply the number of names and the complexity of the process many-fold.

[...]

#### Use and protection of geographical names

- The inclusion of geographic names, as defined in the Guidebook, was developed in response to GAC principle 2.2.
- The protection of government interests in geographic names is accounted for by the requirement that no application for a geographic name (as defined in the Guidebook) can be approved without documentation of the support or non-objection from the relevant government or public authority.
- Country and territory names, as defined in the Applicant Guidebook, have been excluded from the first application round of the gTLD process based on GAC advice.

[...]

- The capacity for an objection to be filed on community grounds, where there is substantial opposition to an application from a community that is targeted by the name also provides an avenue of protection for names of interest to a government which are not defined in the Applicant Guidebook.

**Source: ICANN Board – GAC Consultation: Geographic Names, February 21, 2011.**

The GAC states that the current objection procedures do not effectively address strings that raise national, cultural, geographic, religious and/or linguistic sensitivities or objections that could result in intractable disputes. . . .

Under the Guidebook, protections for these types of names are provided by a series of objections and processes: The requirement for government approval of

certain geographic names, Community-based objections (Rec 20), and Limited Public Interest (or Morality & Public Order Rec 6) objections. The last provides that a string will be excluded if it [...] is a determination that an applied-for gTLD string would be contrary to specific principles of international law as reflected in relevant international instruments of law. . . . It is recognized that principles from international treaties are incorporated into national laws in a range of ways and a panel would need to consider the relevant text in national laws.

**Source: ICANN Board – GAC Consultation: Objections, February 21, 2011.**

[The GAC, in its Scorecard of February 23, 2011, requested a mechanism to protect their interests and define names they consider geographic. ICANN’s Board responded as follows.]

ICANN will investigate a mechanism for the forthcoming round under with GAC members could be exempted from paying fees for objections in some circumstances...

The process relies on pre-existing lists of geographic names for determining which strings require the support or non-objection of a government. Governments and other representatives of communities will continue to be able to utilize the community objection process to address attempted misappropriation of community labels. ICANN will continue to explore the possibility of pre-identifying using additional authoritative lists of geographic identifiers that are published by recognized global organizations.

[The GAC then requested clarification that such a mechanism “implies that ICANN will exclude an applied for string from entering the new gTLD process when the government formally states that this string is considered to be a name for which this country is commonly known as.” ICANN’s Board responded as follows.]

ICANN will continue to rely on pre-existing lists of geographic names for determining which strings require the support or non-objection of a government. This is in the interest of providing a transparent and predictable process for all parties.

**Source: Letter from ICANN (Dengate-Thrush) to GAC (Dryden), March 5, 2011 (attaching the February 23, 2011 Scorecard).**



The Internet Corporation for Assigned Names and Numbers

22 September 2009

Janis Karklins  
 Chairman of the Governmental Advisory Committee  
 Ambassador of Latvia to France  
 via email: janis.karklins@icann.org

Dear Janis

Thank you for the GAC's letter of 18 August, containing the GAC's comments on version 2 of the Draft Applicant Guidebook. I appreciate the detailed consideration given by the GAC to the issue of new gTLDs. Outlined below is a detailed response to the GAC's comments, which I trust the GAC will find useful. I look forward to the Board continuing discussions with the GAC in Seoul, on version 3 of the Draft Applicant Guidebook which will be published by the end of September 2009.

## **I. ICANN'S PREPAREDNESS FOR NEW gTLD ROUND**

### **1. Scalability of gTLD Expansion and Stability of the Internet**

*The GAC is aware that many root server operators have raised concerns about the effect that a major expansion of the gTLD space would have on the stability of the Internet. The GAC considers that a controlled and prudent expansion of the DNS space is of primary importance for safeguarding the stability, security and interoperability of the Internet on which the global economy and social welfare relies so much.*

*The GAC notes that the SSAC and RSSAC have been asked to prepare a report on the scalability of the root zone and the impact of the potential simultaneous introduction of new gTLDs, DNSSEC, IPv6 glue, and IDNs into the root zone, which will be published in August. The GAC will look to this report to provide reassurance that the scaling up of the root will not impair the stability of the Internet and that the technical safeguards are sufficient. The GAC is hopeful the report will stress the importance of developing an alert or warning system, as well as the need for a process for halting the adoption of new top level domains should the root zone begin to show signs of breach or weakness. It should be noted that although the GAC is encouraged this study is underway there is some concern as to why the proper analysis did not occur earlier.*

### **RESPONSE**

In February 2009, with Resolution 2009-02-03-04, the ICANN Board requested the Root Server System Advisory Committee (RSSAC), the Security and Stability Advisory Committee (SSAC),



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*public authorities, as representatives of the sovereign state or territory, cannot be limited as such by ICANN or by any procedures introduced by ICANN for new gTLDs.*

*The GAC is of the opinion that the DAG2 is a substantial improvement on its predecessor, but that it does not yet fully reflect the GAC position that governments and other public authorities, as representatives of citizens of a sovereign state, territory, province or city, have a legitimate interest in the use of geographical names as new TLDs.*

*The GAC therefore proposes the following amendments to be incorporated in version 3 of the Draft Applicant Guidebook (further in the text - DAG3):*

**i. Strings that are a meaningful representation or abbreviation of a country name or territory name should not be allowed in the gTLD space**

*These strings represent countries or territories and the principle of sovereignty must apply. TLDs in this category should therefore be treated in the same way as ccTLDs.*

*The use of exhaustive listings (e.g. ISO 3166-1) will not cover all the ccTLD-like applications envisaged by the GAC and ccNSO, in particular in the following categories:*

*'Commonly referred to as' type strings representing a country or territory but which are not official titles, e.g. .america, .ceylon, .holland;*

*Common or general names that are often applied to more than one country, e.g. .guinea*

**RESPONSE**

While understanding the sentiment that a country name TLD should be treated as a ccTLD, ICANN policy constrains the way in which it is possible to provide country name TLDs to all countries and territories is under the new gTLD program at this time.<sup>1</sup> The treatment of country and territory names, in version 2 of the Draft Applicant Guidebook, was developed in the context of the points raised by the GAC, the ccNSO, and the GNSO policy recommendations and trying to find a balance among the somewhat contrary views. Applications for country and territory names will require evidence of support or non-objection from the relevant government or public authority which is consistent with GAC principle 2.2.<sup>2</sup>, and that evidence must clearly indicate that the government or public authority understands the purpose of the TLD string and the process and obligations under which it is sought.

<sup>1</sup> Meaningful representations of country or territory names in non-Latin scripts will be available under the IDN Fast Track process but country and territory names in Latin scripts are available in the gTLD program only, until the ccTLD policy development is complete.

<sup>2</sup> ICANN should avoid country, territory or place names, and country, territory or regional language or people descriptions, unless in agreement with the relevant governments or public authorities



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Safeguards have been developed to ensure that the relevant government or public authority's sovereign rights are respected, and that the process is understood. It is ultimately the government or public authority's discretion whether to support, or not support, an application for a country name TLD, and the circumstances under which they would be willing to do so.

The Board raised concerns that the criteria for country and territory names, as it appeared in version 2 of the Draft Applicant Guidebook was ambiguous and could cause uncertainty for applicants. Subsequently, on 6 March 2009, the ICANN Board directed staff to, among other things, "... revise the relevant portions of the draft Applicant Guidebook to provide greater specificity on the scope of protection at the top level for the names of countries and territories listed in the ISO 3166-1 standard".

The revised definition, provided in a Geographical Names excerpt of the guidebook posted on 30 May 2009, continues to be based on the ISO 3166-1 standard and fulfills the Board's requirement of providing greater clarity about what is considered a country or territory name in the context of new gTLDs. It also removes the ambiguity that resulted from the previous criteria that the term 'meaningful representation' created.

The Board's intent is, to the extent possible, to provide a bright line rule for applicants. While the revised criteria may have resulted in some changes to what names are afforded protection, it has not changed the original intent to protect all names listed on the ISO 3166-1 list, including the short or long form of the name. It is felt that the sovereign rights of governments continue to be adequately protected as the definition is based on a list developed and maintained by an international organisation.

In the context of the revised definition, the name America is afforded protection, while the names Ceylon and Holland are not. However, the objection process does provide a secondary avenue of recourse. An application will be rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be explicitly or implicitly targeted. With regard to the names .Guinea and .Guinea-Bissau; only the relevant government or public authority for the respective countries can agree to support, or not-object, to the use of their respective names.

**ii. gTLDs using strings with geographic names other than country names or territories (so called geoTLDs) should follow specific rules of procedure**

*The Draft Applicant Guidebook already provides for specific rules of procedure, such as the creation of a Geographic Names Panel or the requirement that an applicant for a geoTLD must document the government's or public authority's support for, or non-objection to, the applicant's application, and must demonstrate the government's or public authority's understanding of the string being requested and its intended use.*



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The evaluation fee was based on detailed analyses of specific tasks and steps needed to perform the evaluation. ICANN has taken a detailed and thorough approach to estimating program development costs, process and risk costs associated with this new program, and consistently used a set of principles in applying the estimation methodology. The results have been tested with sensitivity and other analysis, and appropriate expertise has been retained and applied.

The costs of the program have recently been re-evaluated and the results of the re-evaluation and the supporting data will be posted with the next version of the Applicant Guidebook.

Although the evaluation fee of \$185,000 may be burdensome for certain organizations that are considering applying for a new gTLD, the evaluation fee was developed based upon a policy of revenue-cost neutrality, conservatism, and a detailed cost estimating exercise. The impact on a specific applicant or a class of applicant, by policy, is not a factor in the development of the evaluation fee. While it is acknowledged that some applications may have lower processing costs than others, and the costs associated with evaluating applications may vary, it is difficult, if not impossible, to determine which applications will require more or less resources. The application fee is based upon the estimated average cost of all applications based upon principles of fairness and conservatism.

In the event that there is a surplus from the new gTLD application round, the excess funds will not be used for ICANN's general operations. They will be disposed of in a manner consistent with the community's feedback and the policy recommendations. ICANN's multi-stakeholder model for decision making will be employed to ensure that all decisions regarding the underlying guiding principles, amounts, recipients, timing and manner of disposition of surplus funds, if any, will be handled in accordance with the communities' wishes.

To conclude, I hope you found this information useful and clear. Please contact my office with follow-up that the GAC might have and I will ensure that those questions are addressed. We look forward to comments of the GAC to the Guidebook excerpts and associated material published at <http://www.icann.org/en/announcements/announcement-2-31may09-en.htm> and to the third version of the Guidebook that will be published prior to the Seoul meeting.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Thrush".

Peter Dengate Thrush  
Chairman of the Board



The Internet Corporation for Assigned Names and Numbers

5 August 2010

Heather Dryden  
Chair of the Governmental Advisory Committee  
Senior Advisor to the Government of Canada

Dear Heather

**GAC Comments on new gTLDs and Draft Applicant Guidebook version 3**

Thank you for the GAC's letter of 10 March 2010, providing comments on new gTLDs and version 3 of the Draft Applicant Guidebook. I believe the Board and GAC share a similar viewpoint that it would be in the global public interest that "... the opening up of the gTLD space is undertaken in a way that does not compromise the resilience and integrity of the DNS and serves the global public interest". The Board is pleased with the way in which the various iterations of the guidebooks are evolving, and is particularly pleased by the mechanism whereby the overarching issues are being resolved through working groups comprised of members of the ICANN community and independent experts.

I respond below to each of the areas of concern raised by the GAC.

**Root scaling implications**

ICANN supports the principle that the scale and rate of changes must not negatively impact the resilience, security and stability of the DNS. In February 2009, the ICANN Board requested the Root Server System Advisory Committee (RSSAC), the Security and Stability Advisory Committee (SSAC), and the ICANN staff (including ICANN Staff members dealing with technical issues and the IANA functions) to study the potential issues regarding the addition of IDNs, IPv6 addresses, DNSSEC and substantial numbers of new TLDs to the root zone. This study was completed in August 2009 and posted for comment at <http://www.icann.org/en/committees/dns-root/root-scaling-study-report-31aug09-en.pdf>. A complementary report (<http://www.icann.org/en/committees/dns-root/root-scaling-model-description-29sep09-en.pdf>) describes the characteristics of the quantitative model developed by TNO for dynamic analysis of root scaling issues.

In addition, and as part of ongoing efforts to ensure the stability of the DNS, ICANN contracted with the DNS Operations, Analysis and Research Center (<https://www.dns-oarc.net/>) as independent and well-respected experts to provide an analysis of the impact of adding IPv6, DNSSEC, and additional top-level domains to the ICANN-operated L root server. This study, while independent of the Root Server System

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in a reconsideration of the treatment of country and territory names in the new gTLD process. This has resulted in a change of approach as reflected in the recently published draft version 4 of the Applicant Guidebook: namely, that country and territory names will not be available for delegation in the first round of the new gTLD application process.

With regard to the definition of country names, the Board has sought to ensure both clarity for applicants, and appropriate safeguards for governments and the broad community. A considerable amount of time has been invested in working through the treatment of country and territory names to ensure it meets these two objectives. Following discussion at the Mexico City meeting, the Board recommended that the Applicant Guidebook be revised in two areas regarding this subject: (1) provide greater specificity as to what should be regarded as a representation of a country or territory name in the generic space, and (2) provide greater specificity in defining the qualifying support requirements for continent names, with a revised position to be posted for public comment.

The resulting definition for country and territory names is based on ISO 3166-1 and other published lists to provide clarity for potential applicants and the community. It seeks to remove the ambiguity created by use of the term 'meaningful representation'. Therefore, the definition of country and territory names has not been amended in the recent Guidebook draft and remains consistent with the Board goals and resolution on this issue.

While the revised criteria may have resulted in some changes to what names are afforded protection, there is no change to the original intent to protect all names listed in ISO 3166-1 or a short or long form of those names (and, importantly, translations of them). This level of increased clarity is important to provide process certainty for potential TLD applicants, governments and ccTLD operators – so that it is known which names are provided protections.

The definition is objectively based on the ISO list, which is developed and maintained by a recognised international organisation.

It is acknowledged that ICANN has used the concept of 'meaningful representation' of a country or territory in the context of the IDN ccTLD Fast Track. This reflects the objective of rapid initial deployment of IDNs and the associated need to remove as many potential obstacles as possible. There have always been particular sensitivities about geographic names where non-Latin scripts and a range of languages are involved. It does not follow that these considerations should automatically apply to the broader ccTLD and gTLD spaces. It is reasonable that the criteria for including names (the Fast Track) could be different than the criteria for excluding names (gTLDs).

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geographical strings could be allowed in the gTLD space if in agreement with the relevant government or public authority."



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The ccNSO will be undertaking policy discussions, which may result in a change in position on these two issues. In particular, defining the distinction between country code and generic names may warrant a broader cross-SO/AC policy discussion. Once policy is developed, it will be appropriate for the Board to reconsider these positions.

**Definition of geographical strings insufficient and not in line with paragraphs 2.2 and 2.7 of the GAC principles regarding new gTLDs**

As mentioned above, the Board has sought to ensure, throughout the process of developing a framework for new gTLDs, that there is 1) clarity for applicants, and 2) appropriate safeguards for the benefit of the broad community. The current criteria for defining geographic names as reflected in version 4 of the Draft Applicant Guidebook are considered to meet the Board's objectives and are also considered to address to the extent possible the GAC principles. The current definitions, combined with the secondary avenue of recourse available by way of objections are considered adequate to address the GAC's concerns.

It should be noted that much of the treatment of geographic names in the Applicant Guidebook was developed around the GAC Principles regarding new gTLDs, and conversations and correspondence with the GAC on this issue going back to 2008.

On 2 October 2008, (<http://www.icann.org/correspondence/twomey-to-karklins-02oct08.pdf>) following a teleconference with the GAC on 8 September 2008, the then CEO & President, Paul Twomey, wrote to the GAC explaining proposed principles to guide a procedure for implementing elements of paragraph 2.2. Place names were split into two categories, as follows: 1) sub-national geographical identifiers such as countries, states, provinces; and, 2) city names. Regional language or people descriptions were considered difficult to develop an implementation plan for this element of paragraph 2.2, because it will be difficult to determine the relevant government or public authority for a string which represents a language or people description as there are generally no recognised established rights for such descriptions.

As described in the 2008 letter, city names were considered challenging because a city name can also be a generic term, or a brand name, and in many cases city names are not unique. Therefore, where it is clear that an applicant intends to use the gTLD for purposes associated with the city name evidence of support, or non-objection is necessary. However, provision is made in the Guidebook to protect sovereign rights by requiring government approval for capital city names in any language, of any country or territory listed in the ISO 3166-1 standard.



The Internet Corporation for Assigned Names and Numbers

During the teleconference of 8 September 2008, GAC members identified the ISO 3166-2 List, as an option for defining sub-national names. Accordingly, version 4 of the Applicant Guidebook provides protection for all the thousands of names on that list. Also during this call the idea of the GAC creating a list of geographic and geopolitical names was discussed, however, it is understood that the GAC moved away from this suggestion because it would be a resource intensive effort for all governments to undertake.

In relation to paragraph 2.7, at the Board's request, Paul Twomey (who was ICANN's CEO and President), wrote to the GAC on 17 March 2009 (<http://www.icann.org/correspondence/twomey-to-karklins-17mar09-en.pdf>), requesting the GAC's input on possible options to resolve the outstanding implementation issues regarding the protection of geographic names at the second level. The end result of this request was a letter from the GAC to Paul Twomey, dated 26 May 2009 (<http://www.icann.org/correspondence/karklins-to-twomey-29may09-en.pdf>), which proposed a solution, that was accepted by the Board and ultimately reflected in the draft Registry Agreement developed for new gTLDs. On this basis, the Board considers that this matter has been dealt with to the satisfaction of the Board and the GAC.

#### **Mechanisms for dealing with post-delegation deviation from conditions of government approval**

The GAC's suggestion of including a clause in the registry agreement requiring that in the case of a dispute between a relevant Government and the registry operator, ICANN must comply with a legally binding decision in the relevant jurisdiction has been adopted. The Registry Agreement has been amended accordingly.

In addition, the processes and remedies of the Registry Restrictions Dispute Resolution Procedure are available to governments in cases where the geographic name is applied for as a community-based TLD. The remedies that can be recommended to ICANN under this procedure include:

- remedial measures for the registry to employ to ensure against allowing future registrations that do not comply with community-based restrictions;
- suspension of accepting new domain name registrations in the gTLD until such time as violation(s) is cured; or, in extraordinary circumstances;
- providing for the termination of a registry agreement.



The Internet Corporation for Assigned Names and Numbers

relating to the implementation of the new gTLD program. We will likely follow the Board Workshop with a Special Board Meeting focusing on the new gTLD topics.

I understand the GAC is preparing their comments on version 4 of the Draft Applicant Guidebook, and we very much look forward to the GAC's input for use in that Board Workshop.

Yours sincerely

A handwritten signature in black ink, appearing to read "Peter Dengate-Thrush".

Peter Dengate-Thrush

Peter Dengate-Thrush  
Chair  
ICANN Board of Directors

CC: Rod Beckstrom, CEO and President, ICANN

## Internet Corporation for Assigned Names and Numbers

GROUPS (/EN/GROUPS) › BOARD (/EN/GROUPS/BOARD) › DOCUMENTS (/EN/GROUPS/BOARD/DOCUMENTS)

### Adopted Board Resolutions

25 September 2010

Trondheim, Norway

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1. **New gTLD (generic Top Level Domain) Program Budget**
  2. **New gTLDs – Directions for Next Applicant Guidebook**
    - 2.1. Geographic Names
    - 2.2. New gTLD (generic Top Level Domain) Applicant Support
    - 2.3. Root Zone Scaling
    - 2.4. String Similarity
    - 2.5. Variant Management
    - 2.6. Trademark Protection
    - 2.7. Role of the Board
    - 2.8. Mitigating Malicious Conduct
    - 2.9. GNSO (Generic Names Supporting Organization) New gTLD (generic Top Level Domain) Recommendation 6 Objection Process
    - 2.10. Registry Agreement
    - 2.11. Vertical Integration
  3. **Data and Consumer Protection Working Group**
  4. **Board Global Relationships Committee**
  5. **Nominating Committee Chair**
  6. **March 2011 International Public Meeting**
  7. **Appointment of Akram Atallah as Chief Operating Officer**

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#### 1. New gTLD (generic Top Level Domain) Program Budget

Whereas, the Board Finance Committee considered the New gTLD (generic Top Level Domain) Deployment Budget at its meeting on 20 September 2010 and unanimously recommended that the Board adopt the Deployment Budget <<http://www.icann.org/en/topics/new-gtlds/explanatory-memo-new-gtld-program-budget-22oct10-en.pdf>> (<<http://www.icann.org/en/topics/new-gtlds/explanatory-memo-new-gtld-program-budget-22oct10-en.pdf>>).

Resolved (2010.09.25.03), the Board gives the CEO the following directions relating to the forthcoming version of the Applicant Guidebook for new gTLDs, which is intended to be posted for public comment before the ICANN (Internet Corporation for Assigned Names and Numbers) meeting in Cartagena in December 2010:

## ~~2.1 Geographic Names~~

~~Sub-national place names: Geographic names protection for ISO (International Organization for Standardization) 3166-2 names should not be expanded to include translations. Translations of ISO (International Organization for Standardization) 3166-2 list entries can be protected through community objection process rather than as geographic labels appearing on an authoritative list.~~

Continents and UN Regions: The definition of Continent or UN Regions in the Guidebook should be expanded to include UNESCO's regional classification list which comprises: Africa, Arab States, Asia and the Pacific, Europe and North America, Latin America and the Caribbean.

Governments that file objections should be required to cover costs of the objection process just like any other objector; the objection process will be run on a cost-recovery and loser-pays basis (so the costs of objection processes in which governments prevail will be borne by applicants). Also, the Board notes that the GAC (Governmental Advisory Committee) proposal for free government objections is not specific as to particular objection grounds or particular government objectors (for example whether both national and local government objectors would be covered).

## 2.2 New gTLD (generic Top Level Domain) Applicant Support

Support to applicants will generally include outreach and education to encourage participation across all regions, but any direct financial support for applicant fees must come from sources outside of ICANN (Internet Corporation for Assigned Names and Numbers).

Staff will publish a list of organizations that request assistance and organizations that state an interest in assisting with additional program development, for example pro-bono consulting advice, pro-bono in-kind support, or financial assistance so that those needing assistance and those willing to provide assistance can identify each other and work together.

Owing to the level of uncertainty associated with the launch of new gTLDs, the fee levels currently in the Applicant Guidebook will be maintained for all applicants.

## 2.3 Root Zone Scaling

Real-world experience in root zone scaling has been gained as a result of the implementation of IPv6 (Internet Protocol version 6), DNSSEC (DNS Security Extensions) and IDNs (Internationalized Domain Names) and the hard work of RSSAC and SSAC (Security and Stability Advisory Committee) members in tackling the underlying stability question. Staff is directed to publish its analysis of the impact of IPv6 (Internet Protocol version 6), DNSSEC (DNS Security Extensions) and IDN deployment on the root zone so far.

Staff has also developed a model and a rationale for the maximum rate of applications that can be processed over the next few years. Staff is directed to publish this model and rationale and to seek Board support for the judgment embodied in this model, thereby providing a firm basis for limiting the rate of new delegations. Based on the discussions to date, this limit is expected to be in the range of 1,000 new delegations per year, with this number to be defined precisely in the publication.

The Board notes that an initial survey of root server operators' ability to support this rate of growth has been conducted successfully, and directs staff to revisit the estimate on a regular basis and consider whether a further survey should be repeated.

Further, ICANN (Internet Corporation for Assigned Names and Numbers) will periodically consult with root zone



The Internet Corporation for Assigned Names and Numbers

23 November 2010

Heather Dryden  
Interim Chairman of the Governmental Advisory Committee  
Senior Advisor to the Government of Canada

GAC Comments on version 4 of the new gTLD Applicant Guidebook

Dear Heather

Thank you for your letter of 23 September 2010, providing GAC comments on version 4 of the Draft Applicant Guidebook. I also thank you for your letter of 4 August 2010, relating to procedures for addressing culturally objectionable and/or sensitive strings. I will respond to both letters in this communication.

As you know the Board met in Trondheim on 24 and 25 September 2010, and discussed outstanding issues relating to the implementation of the New gTLD program in order to identify potential ways forward. To the extent possible, the Board took into account the GAC's comments of 23 September 2010; however, as much of the preparation briefing had been provided to the Board well before the meeting, this was difficult to do. You will note, in the resolutions from Trondheim, that staff is directed to determine if the directions indicated by the Board are consistent with GAC comments, and recommend any appropriate further action in light of the GAC's comments.

The adopted Board resolutions from the Trondheim meeting are available at:

<http://www.icann.org/en/minutes/resolutions-25sep10-en.htm>

I would encourage the GAC to read these resolutions in conjunction with the response to the GAC letter.

As you will appreciate, the development of the Applicant Guidebook and the resolution of the overarching issues identified during the process, has been a challenging task. The multi-stakeholder model under which ICANN operates means that we are responsible to a diverse range of stakeholders, and I believe that the ICANN community has done an outstanding job of considering, in many cases, diverse views on issues and finding workable solutions. That said, we do recognize that the new gTLD process cannot be all things to all people, and that some issues can be better addressed in successive rounds.

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This detail is set out in the New gTLD Program Explanatory Memorandum—Withdrawal of Government Support for Registry – Post delegation options  
<http://www.icann.org/en/topics/new-gtlds/withdrawal-government-support-28may10-en.pdf>

Use of geographical names

The Board has sought to ensure, throughout the process of developing a framework for new gTLDs, that there is 1) a clear process for applicants, and 2) appropriate safeguards for the benefit of the broad community including governments. The current criteria for defining geographic names as reflected in version 4 of the Draft Applicant Guidebook are considered to best meet the Board's objectives and are also considered to address to the extent possible the GAC principles. These compromises were developed after several consultations with the GAC – developing protections for geographical names well beyond those approved in the GNSO policy recommendations. The current definitions, combined with the secondary avenue of recourse available by way of objections were developed to address the GAC's concerns.

A detailed account was provided in my letter of 5 August 2010, to the GAC.

*Country and territory names*

I understand that the issue of the use of country and territory names will not be part of the IDN ccPDP; however, the ccNSO is considering options available to consider this issue and the Board anticipates a policy process which provides direction on this issue. The Board will, after the first round of new gTLDs, reconsider the treatment of country and territory names in the new gTLD process.

As stated in previous communications, the Board sought to remove the ambiguity of the term 'meaningful representation' from the definition of country and territory names to provide greater clarity for applicants and appropriate safeguards for governments and the broad community. The current definition is objectively based on the ISO 3166-1 and other published lists to provide clarity for potential applicants and the community.

*City names*

It is acknowledged in the Guidebook (and in previous missives to the GAC) that city names present challenges because city names may also be generic terms or brand names, and in many cases no city name is unique. Unlike other types of geographic names, there are no established lists that can be used as objective references in the evaluation process. Thus, city names can not be afforded universal protection. However, the process does provide a means for cities and applicants to work together where desired.

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Applicants are required to provide a description/purpose for the TLD, and to adhere to the terms and conditions of submitting an application including confirming that all statements and representations contained in the application are true and accurate.

*Objection process*

The criteria for community objections was created with the possible objections to place names in mind and as such the objection process "appropriately enables governments to use this." The *New gTLD Dispute Resolution Procedure* is outlined in an Attachment to Module 3, pp P-1 to P-11 and was also developed so that it is equally accessible to those who wish to utilize the process.

The Board discussed the GAC's position that governments should not be required to pay a fee for raising objections to new gTLD applications, and does not agree with the GAC on this point. It is the Board's view that governments that file objections should be required to cover costs of the objection process just like any other objector; the objection process will be run on a cost-recovery and loser-pays basis (so the costs of objection processes in which governments prevail will be borne by applicants). How would the dispute resolution process be funded: a speculative increase in application fees or increased fees to gTLD registrants? Either of these cases or others seem difficult to implement and unfair.

*Letter of support*

While appreciating that governments need time to consult internally before deciding whether to support an application, obtaining government support or non-objection is the responsibility of the applicant and is stated in Module 2 of the Applicant Guidebook. While it has not been decided how long the application period will be open from the time of launching the new gTLD program, there is a requirement that a four month communications campaign be undertaken prior to launch.

Legal recourse for applicants

As stated earlier in this letter, one of the guiding principles in developing the Applicant Guidebook has been to address and mitigate risks and costs to ICANN and the global Internet community.

ICANN reaffirms its commitment to be accountable to the community for operating in a manner that is consistent with ICANN's Bylaws, including ICANN's Core Values such as "making decisions by applying documented policies neutrally and objectively, with integrity and fairness." The Board does not believe however that ICANN should expose itself to costly lawsuits any more than is appropriate.

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The Board welcomes the report from the Recommendation 6 Working Group and has requested staff to undertake analysis of the report to determine how recommendations could be incorporated into the Guidebook and conduct a consultation with the Working Group before the Cartagena meeting with the aim of finding additional areas of agreement for incorporation into the Applicant Guidebook.

I wish to make a few points regarding the GAC letter of 4 August on this topic. I do not consider this to be a stability issue per se but rather a policy issue where ICANN is implementing the consensus position developed by the GNSO. There are controversial names delegated and registered now at different levels of the domain name system that do not result in security or stability issues.

Additionally, the new gTLD implementation to date has addressed the issues described in the Affirmation of Commitments: competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection. The issues raised by the GAC are neither stability / security nor AoC issues – but they merit the full attention of the community.

The solution that appears in version 4 of the Applicant Guidebook was developed following extensive legal research that examined restrictions in a representative sample of countries, which included Brazil, Egypt, France, Hong Kong, Malaysia, South Africa, Switzerland and the United States of America. Various competing interests are potentially involved, for example the rights of freedom of expression versus sensitivities associated with terms of national, cultural, geographic and religious significance. While freedom of expression in gTLDs is not absolute, those claiming to be offended on national, cultural, geographic or religious grounds do not have an automatic veto over gTLDs. The standards summarized by Recommendation No. 6 indicate that a morality and public order objection should be based upon norms that are widely accepted in the international community.

In addition to the Draft Applicant Guidebook (Module 3), ICANN has published explanatory memoranda, dated 29 October 2008 <http://www.icann.org/en/announcements/announcement-29oct08-en.htm> and 30 May 2009 <http://www.icann.org/en/topics/new-gtlds/morality-public-order-30may09-en.pdf>, that set out the specific standards that have been adopted for such objections and the legal research upon which those standards is based.

Importantly, in addition to the Morality and Public Order objection and dispute resolution processes, the Community Objection standards were developed to address potential registration of names that have national, cultural, geographic and religious sensitivities.

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I understand that some GAC members have expressed dissatisfaction with this process as it was first described in version 2 of the Guidebook. The treatment of this issue in the new gTLD context, was the result of a well-studied and documented process which involved consultations with internationally recognized experts in this area. Advice containing thoughtful proposals for amending the treatment of this issue that maintains the integrity of the policy recommendation would be welcomed. The expression of dissatisfaction without a substantive proposal, does not give the Board or staff a toehold for considering alternative solutions. While the report of the recently convened working group still does not constitute a policy statement as conceived in the ICANN bylaws, ICANN staff and Board are working to collaborate with the community to adopt many of the recommendations.

Once again, I appreciate the GAC's commitment to the new gTLD process and hope you find this letter responsive to GAC concerns.

The proposed final version of the Applicant Guidebook has now been posted and I look forward to discussing the introduction of new gTLDs in Cartagena.

Regards,



Peter Dengate-Thrush

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DRAFT**ICANN Board-GAC Consultation: Geographic Names****EXPLANATION OF ISSUE/HISTORY**

The GAC Principles regarding New gTLDs contain two paragraphs addressing geographic names. Paragraph 2.2<sup>1</sup> relates to names at the top level and paragraph 2.7<sup>2</sup> relates to names at the second level. In its policy recommendations, the GNSO provided that no specific protections be put in place beyond those afforded in the objection and dispute resolution process:

- that community objection procedures provided protections the GAC sought at the top level, and
- protections at the second level should be left to individual registries.

There has been regular communication in the form of face-to-face meetings, communiqués and correspondence between the GAC, staff and the Board on the treatment of geographic names and other issues, since the Board approved the GNSO recommendations for the introduction of new gTLDs in Paris in June 2008.

Many amendments have been made to the Guidebook that incorporate GAC requests regarding the treatment of geographical names.

**REMAINING AREAS OF DIFFERENCE:**

1. The current Guidebook states that country and territory names will not be available in the first round. The GAC requests that Country and territory names not be available until the completion of the IDN ccPDP, and that it may be more appropriate to consider country and territory names outside the new gTLD program.
2. The current Guidebook protects country and territory names that appear on specific U.N. lists and their translations. The GAC requests that names by which countries, cities or regions are commonly known as, or abbreviations of, and which do not appear in the lists used to define geographic names in the Applicant Guidebook should also be given the same protection as names that do appear.

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<sup>1</sup> 2.2 ICANN should avoid country, territory or place names, and country, territory or regional language or people descriptions, unless in agreement with the relevant governments or public authorities.

<sup>2</sup> 2.7 Applicant registries for new gTLDs should pledge to:

- a) adopt, before the new gTLD is introduced, appropriate procedures for blocking, at no cost and upon demand of governments, public authorities or IGOs, names with national or geographic significance at the second level of any new gTLD;
- b) ensure procedures to allow governments, public authorities or IGOs to challenge abuses of names with national or geographic significance at the second level of any new gTLD

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- Names by which countries, cities or regions are commonly known as and which do not appear in the ISO lists should also be given the same protection as names that do appear.

The Board has sought to ensure, throughout the process of developing a framework for new gTLDs, that there is a clear process for applicants, and appropriate safeguards for the benefit of the broad community including governments. The current criteria for defining geographic names as reflected in the Proposed Final Version of the Applicant Guidebook are considered to best meet the Board's objectives and are also considered to address to the extent possible the GAC principles. These compromises were developed after several consultations with the GAC – developing protections geographic names well beyond those approved in the GNSO policy recommendations. These definitions, combined with the secondary avenue of recourse available by way of objections were developed to address the GAC's concerns.

In developing the process for geographic names, ICANN has relied upon ISO or UN lists to assist with geographical definitions in the context of new gTLDs. The combined total of names currently protected in the new gTLD process is well in excess of 5000 names, and providing protection for "commonly used" interpretations of these names would multiply the number of names and the complexity of the process many-fold.

In correspondence to the GAC on 5 August 2010, the Board Chair indicated that the Board had sought to remove the ambiguity of the term 'meaningful representation' from the definition of country and territory names. The current definition is objectively based on the ISO 3166-1 and other published lists to provide greater clarity for applicants and appropriate safeguards for governments and the broad community.

Holland has been raised in this context as an example on a number of occasions by the GAC. However, while not appearing on the ISO 3166-1 list, Holland appears to be protected, as it the Danish translation of 'the Netherlands'.

Language has been added to the Guidebook indicating that governments may send notifications regarding national laws directly to applicants or via public comment forum (see Applicant Guidebook, Module 1, section 1.1.2.5 <http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-12nov10-en.pdf>) once the applications are publicly posted. Such notifications are not meant to serve as formal objections or be cause for a modification to an application. It was decided early in the process development that applicants should not be able to amend applications or applied for strings in order to prevent abuses.

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## SUMMARY OF ACTIONS TAKEN RESPONDING TO GAC AND PUBLIC COMMENTS

### Use and protection of geographical names

- The inclusion of geographic names, as defined in the Guidebook, was developed in response to GAC principle 2.2.
- The protection of government interests in geographic names is accounted for by the requirement that no application for a geographic name (as defined in the Guidebook) can be approved without documentation of the support or non-objection from the relevant government or public authority.
- Country and territory names, as defined in the Applicant Guidebook, have been excluded from the first application round of the gTLD process based on GAC advice.
- A minimum list of reserved names was added to the Registry Agreement based on GAC principle 2.7 which called for protections at the second level. Similarly, all applicants are required to describe in the application their proposed measures for ensuring the protection of geographic names at the second and other levels in the TLD. This information is posted for public information and comment, in accordance with GAC advice.
- The capacity for an objection to be filed on community grounds, where there is substantial opposition to an application from a community that is targeted by the name, also provides an avenue of protection for names of interest to a government which are not defined in the Applicant Guidebook.

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#### ICANN Board-GAC Consultation:

- **Objection Procedures, including requirements for governments to pay fees**
- **Procedures for the Review of Sensitive Strings**
- **Early warning to applicants: whether a proposed string would be considered controversial or to raise sensitivities (including geographical names)**

#### EXPLANATION OF ISSUES/HISTORY

The GNSO and ICANN Board approved policy recommendations for new gTLDs included four major areas where a third party can raise an objection to the creation of a new gTLD. A new gTLD string should: (i) not be confusingly similar to an existing top-level domain or a Reserved Name (Rec. 2); (ii) not infringe the existing legal rights of others (Rec 3); (iii) not be contrary to generally accepted legal norms relating to morality and public order that are recognized under international principles of law (Rec 6); and (iv) be rejected if there is substantial opposition to it from a significant portion of the community to which the string may be explicitly or implicitly targeted (Rec. 20). See [http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-part-08aug07.htm#\\_Toc43798015](http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-part-08aug07.htm#_Toc43798015).

The GNSO also recommended that “[d]ispute resolution and challenge processes must be established prior to the start of the [new gTLD] process,” and “[e]xternal dispute providers will give decisions on objections.”

In Brussels in June 2010, and then in a letter to ICANN dated 4 August 2010 (<http://www.icann.org/en/correspondence/gac-to-dengate-thrush-04aug10-en.pdf>), the GAC:

[R]ecommends that community-wide discussions be facilitated by ICANN in order to ensure that an effective objections procedure be developed that both recognizes the relevance of national laws and effectively addresses strings that raise national, cultural, geographic, religious and/or linguistic sensitivities or objections that could result in intractable disputes. These objection procedures should apply to all pending and future TLDs.

In response to the GAC’s recommendation, a cross-community working group was formed to deal specifically with Rec 6 objections (“Rec6 CWG”). The Rec6 CWG has since issued recommendations on both Morality & Public Order, and Community based objections.<sup>1</sup>

(<http://gnso.icann.org/bitcache/27d221c45bd9d8c234246849d716202bacd6f3ee?vid=14699&disposition=attachment&op=download>).

<sup>1</sup> Suggesting the governments should be able to protect place names, and country, territory or regional language or people descriptions using the community based objection process

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2. The GAC suggests that Governments should not have to pay the same costs as others to file an objection. See Letter from GAC to ICANN, dated 23 September 2010 at <http://www.icann.org/en/correspondence/dryden-to-dengate-thrush-23sep10-en.pdf>. The GAC points to the fact that it has a Bylaws process whereby it can provide advice to the Board for consideration. See Letter from the GAC to ICANN, dated 18 August 2009 at <http://www.icann.org/en/correspondence/karklins-to-dengate-thrush-18aug09-en.pdf>

Since publication of the last version of the Applicant Guidebook, the Board has considered the Rec6 CWG recommendation that the GAC (and ALAC), as a group, should be able to file some or all objections at no or a reduced cost. Although the Board has not reached a formal decision, there is a sense of the Board that it will agree to allow the GAC (and the ALAC) to file objections as a group on behalf of its members so long as doing so is based on some type of consensus of the group members. Further, the Board also thinks that providing some level of funding for objections filed by the GAC (or the ALAC) as a group is an appropriate change to the process.

3. The GAC states that the current objection procedures do not effectively address strings that raise national, cultural, geographic, religious and/or linguistic sensitivities or objections that could result in intractable disputes. See Letter from GAC to ICANN dated 4 August 2010 at <http://www.icann.org/en/correspondence/gac-to-dengate-thrush-04aug10-en.pdf>

Under the Guidebook, protections for these types of names are provided by a series of objections and processes: the requirement for government approval of certain geographical names, Community-based objections (Rec 20), and Limited Public Interest (or Morality & Public Order Rec 6) objections. The last provides that a string will be excluded if there is a determination that an applied-for gTLD string would be contrary to specific principles of international law as reflected in relevant international instruments of law. See Applicant Guidebook, Module 3, section 3.3.4 at <http://www.icann.org/en/topics/new-gtlds/draft-dispute-resolution-procedures-clean-12nov10-en.pdf>. It is recognized that principles from international treaties are incorporated into national laws in a range of different ways, and a panel would need to consider the relevant text in national laws.

4. The GAC suggests that the objection procedures should apply to all pending and future TLDs. See Letter from GAC to ICANN dated 4 August 2010 at <http://www.icann.org/en/correspondence/gac-to-dengate-thrush-04aug10-en.pdf>. ICANN has been asked to note that both the UK and New Zealand take the position that the objection procedures should apply only to new gTLDs.

The Guidebook, and all of the procedures developed for processing applications for and objections to new gTLDs, apply only to new gTLDs and not to existing TLDs or other TLDs (e.g IDN-ccTLDs) that will not be evaluated under the New gTLD Program.

From: On Behalf Of Peter Dengate Thrush  
Sent: Saturday, March 05, 2011 12:50 PM  
To: Heather Dryden  
Cc: ICANN Board of Directors  
Subject: [icann-board] Documenting the Board/GAC Brussels consultation

Dear Heather,

On behalf of the Board of Directors of ICANN, I would like to formally thank the ICANN's Governmental Advisory Committee for participating in the first intersessional Board/GAC meetings, held in Brussels on 28 February and 1 March 2011, regarding ICANN's proposed implementation of the new gTLD program.

We appreciate the preparatory work and time commitment of the GAC Members in participating in these discussions. We also look forward to continuing to work with you on the best ways to evaluate and implement changes to the program resulting from your advice, in the consultation scheduled to be held at the Silicon Valley ICANN Meetings to be held in San Francisco later this month. We are still holding the 17 March consultation slot open and look forward to adding the other day to these consultations following on from your recent offer to be available for this additional time.

The Board looks forward to continuing to collaborate with the GAC in order to conclude the consultation process on the new gTLD program during the Silicon Valley/San Francisco Meeting.

The Board has made a good faith effort toward narrowing the outstanding issues as evidenced by the production of Board Papers, and the subsequent use of the GAC scorecard to frame and shape the issues. The clarity gained during these efforts has significantly reduced the amount of work that needs to be done in order to reach agreement on most issues.

We have included the ICANN Board's response to the GAC scorecard entitled 'Board Notes GAC Actionable Scorecard, attached. We have provided this response, to set out information regarding the Board's evaluation of the GAC advice, which has been summarized within your scorecard. We look forward to discussing this with you further as part of the evaluation. The issues that you have raised are responded to point-by-point.

While discussion in Brussels confirmed that we would work together to clarify implementation of the issues marked as "1(b)", a narrowed focus in San Francisco on the issues that are still in contention would be a best use of the Board and GAC's time during the two days of consultations, and should represent the final stages in our required consultation. Accordingly, we propose focusing there on those items marked with a "2", in the Board's response to the Scorecard attached. Those items marked 1(b) might result in follow on discussions with the GAC regarding implementation in the time leading up to the launch of the program, but do not appear that they will require the same consultation that we have triggered on the "2"'s since we are not in fundamental disagreement on those items categorized as 1(b)'s.

**ICANN Board Notes on the GAC New gTLDs Scorecard**

4 March 2011

**This document contains the ICANN Board's notes on the "GAC indicative scorecard on new gTLD outstanding issues" of 23 February 2011. Each GAC scorecard item is noted with a "1A", "1B", or "2":**

- "1A" indicates that the Board's position is consistent with GAC advice as described in the Scorecard.
- "1B" indicates that the Board's position is consistent with GAC advice as described in the Scorecard in principle, with some revisions to be made.
- "2" indicates that the Board's current position is not consistent with GAC advice as described in the Scorecard, and further discussion with the GAC in San Francisco is required.

<b>Item #</b>	<b>GAC Scorecard Actionable Item</b>	<b>Position</b>	<b>Notes</b>
<b>1.</b>	<b>The objection procedures including the requirements for governments to pay fees</b>		
1.	Delete the procedures related to "Limited Public Interest Objections" in Module 3.	<b>1B</b>	The GAC indicated in Brussels that its concern relates to requiring governments to use this objection process. The Board and GAC therefore agreed that it would be consistent with GAC advice to leave the provision for Limited Public Interest Objections in the Guidebook for general purposes, but the GAC (as a whole) would not be obligated to use the objection process in order to give advice.
<b>2.</b>	<b>Procedures for the review of sensitive strings</b>		
2.1.1	<b>1. String Evaluation and Objections</b>	<b>1B</b>	A procedure for GAC review will be

ICANN Board Notes on the GAC New gTLDs Scorecard

			be appropriate to implement a particular action based on one such decision.
<b>8.</b>	<b>Use of geographic names:</b>		
8.1.1.1	<b>1. Definition of geographic names</b> Implement a free of charge objection mechanism would allow governments to protect their interest	<b>1B</b>	ICANN will investigate a mechanism for the forthcoming round under which GAC members could be exempted from paying fees for objections in some circumstances (subject to constraints imposed by budget and other considerations).
8.1.1.2	and to define names that are to be considered geographic names.	<b>2</b>	The process relies on pre-existing lists of geographic names for determining which strings require the support or non-objection of a government. Governments and other representatives of communities will continue to be able to utilize the community objection process to address attempted misappropriation of community labels. ICANN will continue to explore the possibility of pre-identifying using additional authoritative lists of geographic identifiers that are published by recognized global organizations.
8.1.2	This implies that ICANN will exclude an	<b>1B</b>	ICANN will continue to rely on pre-

ICANN Board Notes on the GAC New gTLDs Scorecard

	<p>applied for string from entering the new gTLD process when the government formally states that this string is considered to be a name for which this country is commonly known as.</p>		<p>existing lists of geographic names for determining which strings require the support or non-objection of a government. This is in the interest of providing a transparent and predictable process for all parties. (See related note above.)</p>
8.1.3	<p>Review the proposal in the DAG in order to ensure that this potential [city name applicants avoiding government support requirement by stating that use is for non-community purposes] does not arise. Provide further explanations on statements that applicants are required to provide a description/purpose for the TLD, and to adhere to the terms and condition of submitting an application including confirming that all statements and representations contained in the application are true and accurate.</p>	2	<p>There are post-delegation mechanisms to address this situation. In addition, the "early warning" opportunity will offer an additional means to indicate community objections.</p>
8.1.4	<p>Governments should not be required to pay a fee for raising objections to new gTLD applications. Implement a free objection mechanism would allow governments to protect their interest.</p>	1B	<p>ICANN will investigate a mechanism for the forthcoming round under which GAC members could be exempted from paying fees for objections in some circumstances (subject to constraints imposed by budget and other</p>

**APPENDIX E**

Coordinates: 23°35'29"S 46°36'28"W

# Ipiranga (district of São Paulo)

From Wikipedia, the free encyclopedia  
 (Redirected from Ipiranga)

**Ipiranga** (Portuguese pronunciation: [ipiˈɾɐ̃ŋa], from the Tupi (*y*, river; *pirang*, vermelho) for "red river") is an historical district located in the subprefecture of the same name of São Paulo, Brazil.<sup>[1]</sup> The name Ipiranga comes from the river (which now is a brook) of the same name located in the region, which means "red river" in a Tupí-Guaraní language. The Independence Park (Parque da Independência), where supposedly the Emperor Pedro I of Brazil proclaimed the independence of Brazil, the Paulista Museum, which exhibits classic architecture and a collection of Brazilian colonial artifacts, and the Zoology Museum, are also located in Ipiranga.

The Ipiranga Brook is perhaps one of the most famous Brazilian brooks, because it is mentioned in the very first line of the Brazilian National Anthem.

The region near the Tamanduateí River had industrial characteristics, to the point where buses and trams heading there had the destination labeled "Factory". The area next to Nazaré Avenue, in contrast, is filled with mansions of wealthy families and an amount of colleges, like Unesp and São Camilo, and workers of the factories houses.

The commercial center of Ipiranga concentrates on Silva Bueno Street. There are banks, clothes stores and grocery stores like the famous Chocolândia.

## References

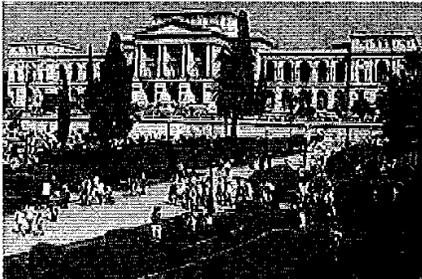
- ^ Subprefecture of Ipiranga (http://www.prefeitura.sp.gov.br/cidade/secretarias/subprefeituras/ipiranga/)

Retrieved from "http://en.wikipedia.org

**Ipiranga**



Location in the city of São Paulo



Paulista Museum, in Ipiranga district, crowded in the celebration of the Brazilian Independence Day.

<b>Country</b>	Brazil
<b>State</b>	São Paulo
<b>City</b>	São Paulo
<b>Government</b>	
• <b>Type</b>	Subprefecture
• <b>Subprefect</b>	Danilo Antão Fernandes
<b>Population (2000)</b>	

<b>• Total</b>	98.863
<b>HDI</b>	0.883 –high
<b>Website</b>	Subprefecture of Ipiranga ( <a href="http://www.prefeitura.sp.gov.br/cidade/secretarias/subprefeituras/ipiranga/">http://www.prefeitura.sp.gov.br/cidade/secretarias/subprefeituras/ipiranga/</a> )

[/w/index.php?title=Ipiranga\\_\(district\\_of\\_São\\_Paulo\)&oldid=546553591"](/w/index.php?title=Ipiranga_(district_of_São_Paulo)&oldid=546553591)

Categories: Districts of São Paulo

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# Ipiranga Brook

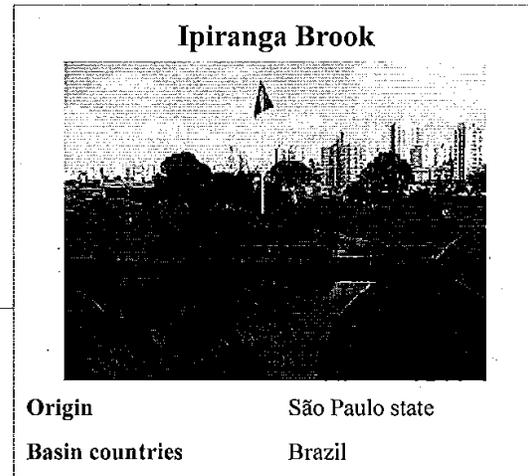
From Wikipedia, the free encyclopedia

The **Ipiranga Brook** is a river of São Paulo state in southeastern Brazil, historically known as the place where Dom Pedro I declared the independence of Brazil from the United Kingdom of Portugal, Brazil and the Algarves.

Its name derives from the Tupi words: "Y", which means water or river, and "Piranga", which means red. It is also mentioned in the country's national anthem.

## Contents

- 1 Declaration of Independence
- 2 See also
- 3 References
- 4 External links



## Declaration of Independence

On September 2, 1822, a decree with Lisbon's demands arrived in Rio de Janeiro, while Prince Pedro was in São Paulo. Princess Maria Leopoldina, acting as Princess Regent, met with the Council of Ministers and decided to send her husband a letter advising him to proclaim Brazil's independence. The letter reached Prince Pedro on September 7, 1822. That same day, in a famous scene at the shore of the Ipiranga Brook, he declared the country's independence, ending 322 years of colonial dominance of Portugal over Brazil.<sup>[1]</sup> According to journalist Laurentino Gomes, who wrote a book about the event, *1822*, Prince Pedro "could not wait for his arrival to São Paulo to announce the decision";<sup>[2]</sup> Pedro "was a reckless man in his decisions but he had the profile of leader that Brazil needed at the time, because there was no time to think".<sup>[2]</sup>



Prince Pedro declares the Independence of Brazil on September 7, 1822. "Independencia ou morte" (Independence or death) (1888), oil on canvas painting by Pedro Américo.

## See also

- List of rivers of São Paulo
- Independence Day (Brazil)
- *1822* (book by Laurentino Gomes)

## References

- <sup>^</sup> **(Portuguese)** Sete de Setembro ([http://www.multirio.rj.gov.br/historia/modulo02/sete\\_setembro.html](http://www.multirio.rj.gov.br/historia/modulo02/sete_setembro.html)) Prefeitura do Rio de Janeiro. Retrieved on 2009-07-05.
- <sup>^</sup> <sup>*a b*</sup> Brasil, Ubiratan. "O impetuoso que o país precisava" ([http://www.estadao.com.br/estadaodehoje/20100905/not\\_imp605427,0.php](http://www.estadao.com.br/estadaodehoje/20100905/not_imp605427,0.php)). *O Estado de S. Paulo*. September 5, 2010.

## External links

- Brazilian Ministry of Transport ([http://www.zonu.com/imapa/americas/md\\_SaoPaolo\\_brazil.pdf](http://www.zonu.com/imapa/americas/md_SaoPaolo_brazil.pdf))

Retrieved from "[http://en.wikipedia.org/w/index.php?title=Ipiranga\\_Brook&oldid=564429723](http://en.wikipedia.org/w/index.php?title=Ipiranga_Brook&oldid=564429723)"

Categories: Rivers of São Paulo (state) | São Paulo (state) geography stubs

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# Brazilian National Anthem

From Wikipedia, the free encyclopedia

The **Brazilian national anthem** (Portuguese: *Hino Nacional Brasileiro*) was composed by Francisco Manuel da Silva in 1831 and had been given at least two sets of unofficial lyrics before a 1922 decree by President Epitácio Pessoa gave the anthem its definitive, official lyrics, by Joaquim Osório Duque-Estrada, after several changes were made to his proposal, written in 1909.

The anthem's lyrics have been described as Parnassian in style and Romantic in content.<sup>[1]</sup>

## Contents

- 1 History
- 2 Lyrics
- 3 Tupi lyrics
- 4 Footnotes
- 5 See also
- 6 External links

## History

The melody of the Brazilian national anthem was composed by Francisco Manuel da Silva and was presented to the public for the first time in April 1831.<sup>[2]</sup> On 7 April 1831, the first Brazilian Emperor, Pedro I, abdicated the Crown and days later left for Europe, leaving behind the then-five-year-old Emperor Pedro II.

From the proclamation of the independence of Brazil in 1822 until the 1831 abdication, an anthem that had been composed by Pedro I himself, celebrating the country's independence (and that now continues to be an official patriotic song, the *Independence Anthem*), was used as the National Anthem. In the immediate aftermath of the abdication of Pedro I, the Anthem composed by him fell in popularity.

Francisco Manuel da Silva then seized this opportunity to present his composition, and the Anthem written by him was played in public for the first time on April 13, 1831.<sup>[3]</sup> On that same day, the ship carrying the former Emperor left the port of Rio de Janeiro. The date of April 13 now appears in official calendars as the *Day of the Brazilian National Anthem*.

As to the actual date of composition of the music presented in April 1831, there is controversy among historians. Some hold that Francisco Manuel da Silva composed the music in the last four months of 1822

## Hino Nacional Brasileiro

*English: Brazilian National Anthem*



National anthem of



Brazil

**Lyrics** Osório Duque-Estrada, 1909

**Music** Francisco Manuel da Silva, 1831

**Adopted** 1831 during the Empire of Brazil and 1890 in the Federative Republic of Brazil (then named *Republic of the United States of Brazil*).

### Music sample

Hino Nacional Brasileiro (Instrumental)

0:00

to commemorate Brazil's independence (declared on 7 September 1822), others hold that the hymn was written in early 1823 and others consider the evidence of composition dating back to 1822 or 1823 unreliable, and hold that the Anthem presented on 13 April 1831 was written in 1831, and not before.<sup>[4]</sup> In any event, the Anthem remained in obscurity until it was played in public on 13 April 1831. In style, the music resembles early Romantic Italian music such as that of Gioachino Rossini.

Initially, the music composed by Francisco Manuel da Silva was given lyrics by Appeals Judge Ovídio Saraiva de Carvalho e Silva not as a National Anthem, but as a hymn commemorating the abdication of Pedro I and the accession of Pedro II to the Throne. It was known during this early period as "April 7 Hymn".<sup>[5]</sup> The lyrics by Ovídio Saraiva soon fell out of use, given that they were considered poor, and even offensive towards the Portuguese. The music, however, continued enjoying sustained popularity, and by 1837 it was played, without lyrics, in all public ceremonies.<sup>[6]</sup>

Although no statute was passed during the imperial period to declare Francisco Manuel da Silva's musical composition as the National Anthem, no formal enactment was considered necessary for the adoption of a National Anthem. A National Anthem was seen as resulting from praxis or tradition. Thus, by 1837, when it was played in all official solemnities, Francisco Manuel da Silva's composition was already the Brazilian National Anthem.

A new set of lyrics was proposed in 1841, to commemorate the coming of age and Coronation of Emperor Pedro II; those lyrics, popular but also considered poor, were soon abandoned too, this time by order of Emperor Pedro II, who specified that in public ceremonies the Anthem should be played with no lyrics. Emperor Pedro II directed that Francisco Manuel da Silva's composition, as the National Anthem of the Empire of Brazil, should be played, without lyrics, on all occasions when the monarch presented himself in public, and in solemnities of military or civilian nature; the composition was also played abroad in diplomatic events relating to Brazil or when the Brazilian Emperor was present.<sup>[7]</sup>

During the Empire of Brazil era, the American composer and pianist Louis Moreau Gottschalk, then residing in Rio de Janeiro, Brazil, composed two nationalistic works of classical music based on the Brazilian National Anthem that achieved great popularity during the imperial period: the *Brazilian Solemn March* ("Marcha Solene Brasileira", in the modern Portuguese spelling or "Marcha Solemne Brasileira", in the original spelling in force at the time of composition<sup>[8]</sup>) and the *Great Triumphal Fantasy on the Brazilian National Anthem* ("Grande Fantasia Triunfal sobre o Hino Nacional Brasileiro"). The former was dedicated to Emperor Pedro II, and the latter was dedicated to his heiress presumptive, the Princess Imperial Isabel, comtesse d'Eu. Those works are in the vein of similar compositions written at the time in other Nations, such as Charles Gounod's *Fantasy on the Russian National Anthem*. The *Grand Triumphal Fantasy*, long forgotten, resurfaced in popularity in 1985, at the dawn of Brazil's *New Republic*, during the country's re-democratization process, when it was played to accompany the funeral cortège of President Tancredo Neves.

After the Proclamation of the Republic in 1889, the new rulers made a competition in order to choose a new anthem, and the competition was won by Leopoldo Miguez. After protests against the adoption of the proposed new anthem, however, the Head of the Provisional Government, Deodoro da Fonseca, formalized Francisco Manuel da Silva's composition as the National Anthem, while Miguez's composition was deemed the Anthem of the Proclamation of the Republic. Deodoro himself was said to prefer the old anthem to the new composition that became the Anthem of the Proclamation of the Republic. The Decree of the Provisional Government (Decree 171 of 1890) confirming Francisco Manuel da Silva's music, that had served as the National Anthem of the Empire of Brazil, as the National Anthem of the new Republic, was

issued on 20 January 1890.

In the early days of the new Federal Republic, the National Anthem continued without official lyrics, but several lyrics were proposed, and some were even adopted by different states of Brazil. The lack of uniform, official lyrics would only be terminated in 1922, during the celebrations of the first centennial of the Proclamation of Independence, when an adapted version of Joaquim Osório Duque Estrada's lyrics, first proposed in 1909, were deemed official.

The official lyrics of the Brazilian National Anthem were proclaimed by decree of President Epitácio Pessoa (Decree 15.761 of 1922), issued on 6 September 1922, at the height of the celebrations of the Independence Centennial. This presidential decree was issued in execution of a legislative decree adopted by Congress on 21 August 1922.

The National Anthem is considered by the current Constitution of Brazil, adopted in 1988, one of the four national symbols of the country, along with the Flag, the Coat of Arms and the National Seal. The legal norms currently in force concerning the National Anthem are contained in a statute passed in 1971 (Law 5.700 of 1 September 1971), regulating the national symbols.

The music of the National Anthem was originally intended to be played by symphonic orchestras; for the playing of the National Anthem by bands, the march composed by Antão Fernandes is included in the instrumentation. This adaptation, long in use, was made official by the 1971 statute regulating national symbols. This same statute also confirmed as official the traditional vocal adaptation of the lyrics of the National Anthem, in F major, composed by Alberto Nepomuceno.

## Lyrics

The song consists of two consecutive stanzas. The adoption in 1922 of lyrics containing two stanzas thus created the present situation of the music of the anthem being played twice so as to allow for the singing of both stanzas.

Brazilian law stipulates that the music needs to be played only once in instrumental renditions of the anthem without vocal accompaniment (thus, in instrumental renditions without vocal accompaniment, the playing of the music twice is optional), but both stanzas must be sung in vocal performances.

The second stanza is often dropped when played at sporting events, but most renditions of the Brazilian National Anthem for sporting events are instrumental and not vocal.

In the lyrics, the opening line's mention of the Ipiranga river refers to the stream near (and now part of) the city of São Paulo where Prince Dom Pedro, the future Emperor Dom Pedro I of Brazil, declared Brazilian independence from Portugal.<sup>[9]</sup>

### Portuguese lyrics

### English translation

#### First stanza

Ouviram do Ipiranga as margens plácidas

The placid shores of Ipiranga heard

De um povo heroico o brado retumbante,  
E o sol da Liberdade, em raios fúlgidos,  
Brilhou no céu da Pátria nesse instante.

Se o penhor dessa igualdade  
Conseguimos conquistar com braço forte,  
Em teu seio, ó Liberdade,  
Desafia o nosso peito a própria morte!

Ó Pátria amada,  
Idolatrada,  
Salve! Salve!

Brasil, um sonho intenso, um raio vívido,  
De amor e de esperança à terra desce,  
Se em teu formoso céu, risonho e límpido,  
A imagem do Cruzeiro resplandece.

Gigante pela própria natureza,  
És belo, és forte, impávido colosso,  
E o teu futuro espelha essa grandeza.

Terra adorada  
Entre outras mil  
És tu, Brasil,  
Ó Pátria amada!

Dos filhos deste solo  
És mãe gentil,  
Pátria amada,  
Brasil!

the resounding cry of a heroic people  
and in shining rays, the sun of liberty  
shone in our homeland's skies at this very moment.

If the assurance of this equality  
we achieved by our mighty arms,  
in thy bosom, O freedom,  
our chest shall defy death itself!

O beloved,  
idolized homeland,  
Hail, hail!

Brazil, an intense dream, a vivid ray  
of love and hope descends to earth  
if in thy lovely, smiling and clear skies  
the image of the (Southern) Cross  
shines resplendently.

Giant by thine own nature,  
thou art beautiful, thou art strong, an intrepid colossus,  
and thy future mirrors thy greatness.

Beloved Land  
amongst a thousand others  
art thou, Brazil,  
O beloved homeland!

To the children of this land  
thou art a gentle mother,  
beloved homeland,  
Brazil!

#### Second stanza

Deitado eternamente em berço esplêndido,  
Ao som do mar e à luz do céu profundo,  
Fulguras, ó Brasil, florão da América,  
Iluminado ao sol do Novo Mundo!

Do que a terra mais garrida  
Teus risonhos, lindos campos têm mais flores,  
"Nossos bosques têm mais vida",  
"Nossa vida" no teu seio "mais amores". (\*)

Eternally laid on a splendid cradle,  
by the sound of the sea and the light of the deep sky,  
thou shinest, O Brazil, finial of America,  
illuminated by the sun of the New World!

Than the most elegant land abroad,  
thy smiling, pretty prairies have more flowers  
"Our meadows have more life",  
"our life" in thy bosom "more love". (\*)

Ó Pátria amada,  
Idolatrada,  
Salve! Salve!

Brasil, de amor eterno seja símbolo  
O lábaro que ostentas estrelado,  
E diga o verde-louro dessa flâmula  
- Paz no futuro e glória no passado.

Mas se ergues da justiça a clava forte,  
Verás que um filho teu não foge à luta,  
Nem teme, quem te adora, a própria morte.

Terra adorada  
Entre outras mil  
És tu, Brasil,  
Ó Pátria amada!

Dos filhos deste solo  
És mãe gentil,  
Pátria amada,  
Brasil!

O beloved,  
idolized homeland,  
Hail, hail!

Brazil, of eternal love be the symbol  
the starred banner thou showest forth  
and proclaim the laurel-green of thy pennant  
'Peace in the future and glory in the past.'

But if thou raisest the strong gavel of Justice,  
thou wilt see that a son of thine flees not from battle,  
nor does he who loves thee fear his very own death.

Beloved Land,  
amongst a thousand others  
art thou, Brazil,  
O beloved homeland!

To the children of this land  
thou art a gentle mother,  
beloved homeland,  
Brazil!

(\*) The passages in quotation marks were extracted from Gonçalves Dias' poem "Canção do exílio".

## Tupi lyrics

These are unofficial Tupi language.

First stanza: Embeyba Ypiranga sui, pitúua, Ocendu kirimbáua sacemossú Cuaracy picirungára, cendyua, Retama yuakaupé, berabussú.

Cepy quá iauessáua sui ramé, Itayiuá irumo, iraporepy, Mumutara sáua, ne pyá upé, I manossáua oiko iané cepy.

Iassalssú ndê, Oh moetéua Auê, Auê !

Brasil ker pi upé, cuaracyáua, Caissú í saarússáua sui ouié, Marecê, ne yuakaupé, poranga. Ocenipuca Curussa iepé !

Turussú reikô, ara rupí, teen, Ndê poranga, i santáua, ticikyie Ndê cury quá mbaé-ussú omeen.

Yby moetéua, Ndê remundú, Reikô Brasil, Ndê, iyaissú!

Mira quá yuy sui sy catú, Ndê, ixaissú, Brasil!

Second stanza: Ienotyua catú pupé reicô, Memê, paráteapú, quá ara upé, Ndê recendy, potyr America sui. I

Cuaracy omucendy iané !

Inti orecó purangáua pyrê Ndê nhu sorryssára omeen potyra pyrê, ìCicuê pyrê orecó iané caussúf. Iané cicuê, indê pyá upé, saissú pyrêf.

Iassalsú ndê, Oh moetéua Auê, Auê !

Brasil, ndê pana iacy-tatá-uára Toicô rangáua quá caissú retê, I quá-pana iakyrá-tauá tonhee Cuire catuana, ieorobiára kuecê.

Supí tacape repuama remé Ne mira apgáua omaramunhã, Iamoetê ndê, inti iacekyé.

Yby moetéua, Ndê remundú, Reicô Brasil, Ndê, iyaissú !

Mira quá yuy sui sy catú, Ndê, ixaissú, Brasil!

## Footnotes

- <sup>^</sup> Você entende o Hino Nacional Brasileiro? (<http://www.soportugues.com.br/secoes/curiosidades/hino.php>) - Só Português (in Portuguese)
- <sup>^</sup> <http://www.clerioborges.com.br/hinonacional.html#0002>
- <sup>^</sup> <http://www.clerioborges.com.br/hinonacional.html#0002>
- <sup>^</sup> [http://www.miniweb.com.br/cidadania/hinos/historia/hist\\_hino\\_nacional.html](http://www.miniweb.com.br/cidadania/hinos/historia/hist_hino_nacional.html)
- <sup>^</sup> <http://www.clerioborges.com.br/hinonacional.html>
- <sup>^</sup> <http://www.clerioborges.com.br/hinonacional.html>
- <sup>^</sup> <http://www.clerioborges.com.br/hinonacional.html>
- <sup>^</sup> Because the spelling of Brazil with a "z" became obsolete in the Old Republic due to changes in the orthography of the Portuguese language, and the country's name has since then been spelled with an "s" in Portuguese - Brasil - sometimes the title of that composition is rendered as "Marcha Solemne Brasileira", the adjective "Solemne" retaining the 19th century spelling, while the adjective "Brasileira" is rendered in the modern spelling to avoid writing the country's name with a "z".
- <sup>^</sup> <http://nationalanthems.me/brazil-hino-nacional-brasileiro/>

## See also

- Brazilian Flag Anthem (Hino à Bandeira)
- Brazilian Anthem of Independence (Hino da Independência)
- Brazilian Republic Anthem (Portuguese: Hino da Proclamação da República)

## External links

- Brazil: *Hino Nacional Brasileiro* - Audio of the national anthem of Brazil, with information and lyrics (<http://nationalanthems.me/brazil-hino-nacional-brasileiro/>)
- Free sheet music ([http://cantorion.org/pieces/1600/Brazilian\\_National\\_Anthem\\_\(Hino\\_Nacional\\_Brasileiro\)](http://cantorion.org/pieces/1600/Brazilian_National_Anthem_(Hino_Nacional_Brasileiro))) of the Brazilian National Anthem from *Cantorion.org*
- Other patriotic songs - Brazilian Government portal website (<http://www.brasil.gov.br/sobre/o-brasil/estado-brasileiro/simbolos-e-hinos>)

Brazilian National Anthem - Wikipedia, the free encyclopedia

[http://en.wikipedia.org/wiki/Brazilian\\_National\\_Anthem](http://en.wikipedia.org/wiki/Brazilian_National_Anthem)

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Categories: National anthems | National symbols of Brazil | Portuguese-language songs  
Brazilian patriotic songs

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**APPENDIX F**

The screenshot shows a web browser window with the URL <https://gtldresult.icann.org/application-result/applicationstatus>. The page header includes the ICANN logo and 'New Generic Top-Level Domains' text. Navigation links for 'About', 'Applicants', 'Program Status', and 'Media' are present, along with social media icons for Twitter and Facebook. A secondary navigation bar contains links for 'ICANN', 'Applicant Guidebook', 'TAS', and 'Customer Service'. The main content area is titled 'NEW GTLD CURRENT APPLICATION STATUS' and features a search bar with 'ipiranga' entered and a 'Search' button. To the right of the search bar are links for 'Download All PICs' and 'View All GAC Advice Responses'. On the left side, there is a 'FILTER RESULTS' sidebar with dropdown menus for 'Type', 'Application Status', 'Updates', 'Objections', 'GAC EW', 'Contention Sets', and 'PICs', along with an 'Apply Filters' button. Below the filters is a 'QUICK SEARCH' section with a link for 'IE Result - Pass' and a 'Reset All' button. The main results area displays a table with the following data:

Prioritization Number	String [1]	Applicant	Location [2]
1357	IPIRANGA	Ipiranga Produtos de Petroleo S.A.	BR

Below the table, it indicates 'Displaying 1 - 1 of 1'. A 'Notes' section follows, containing ten numbered items:

1. **String [1]:** ASCII or Unicode for IDN strings
2. **Location [2]:** Indicated by applicant as principal place of business. Two-letter country code is based on ISO 3166-1 code lists. See [http://www.iso.org/iso/country\\_codes/iso\\_3166\\_code\\_lists/country\\_names\\_and\\_code\\_elements.htm](http://www.iso.org/iso/country_codes/iso_3166_code_lists/country_names_and_code_elements.htm)
3. **Community:** Based on applicant's answer to question 19
4. **Geographic:** Based on applicant's answer to question 21
5. **Applicant Support:** Three applications have applied for applicant support. See application IDs: 1-1309-46695 (KIDS), 1-1873-71868 (IDN) and 1-2104-81541 (UMMAH)
6. **Format:** In some cases the display of the application data has been adjusted for format consistency
7. The Geographic Names Panel has determined that the string does not fall within the criteria for a geographic name contained in the Applicant Guidebook Section 2.2.1.4.
8. The Geographic Names Panel has determined that the string falls within the criteria for a geographic name contained in the Applicant Guidebook Section 2.2.1.4. The applicant was contacted to provide documentation of support/non-objection per Section 2.2.1.4.3 of the Applicant Guidebook.
9. The String Similarity Panel has determined that this string is visually similar to an existing TLD (.mil), creating a probability of user confusion.
10. Per the 4 June 2013 New gTLD Program Committee (NGPC) approved [resolution](#) to adopt the "NGPC Scorecard of 1As Regarding Non-Safeguard Advice in the GAC Beijing Communiqué."

The screenshot shows a web browser window with the URL <https://gtldresult.icann.org/application-result/applicationstatus/viewstatus>. The page header includes the ICANN logo and "New Generic Top-Level Domains" text. Navigation links for "About", "Applicants", "Program Status", and "Media" are visible. The main content area is titled "NEW GTLD CURRENT APPLICATION STATUS" and features a search bar with the text "ipiranga" and a "Search" button. To the right of the search bar are links for "Download All PICs" and "View All GAC Advice Responses".

On the left side, there is a "FILTER RESULTS" panel with several dropdown menus: "Type", "Application Status", "Updates", "Objections", "Has GAC EW" (highlighted in yellow), "Contention Sets", and "PICs". Below these filters is an "Apply Filters" button. Further down, a "QUICK SEARCH" section shows "IE Result - Pass" and a "Reset All" button.

The main content area displays a message: "There are no applications matching your search/filter criteria." Below this message is a "Notes" section containing a list of 10 numbered items:

1. **String [1]:** ASCII or Unicode for IDN strings
2. **Location [2]:** Indicated by applicant as principal place of business. Two-letter country code is based on ISO 3166-1 code lists. See [http://www.iso.org/iso/country\\_codes/iso\\_3166\\_code\\_lists/country\\_names\\_and\\_code\\_elements.htm](http://www.iso.org/iso/country_codes/iso_3166_code_lists/country_names_and_code_elements.htm)
3. **Community:** Based on applicant's answer to question 19
4. **Geographic:** Based on applicant's answer to question 21
5. **Applicant Support:** Three applications have applied for applicant support. See application IDs: 1-1309-46695 (KIDS), 1-1873-71888 (IDN) and 1-2104-81541 (UMMAH)
6. **Format:** In some cases the display of the application data has been adjusted for format consistency
7. The Geographic Names Panel has determined that the string does not fall within the criteria for a geographic name contained in the Applicant Guidebook Section 2.2.1.4.
8. The Geographic Names Panel has determined that the string falls within the criteria for a geographic name contained in the Applicant Guidebook Section 2.2.1.4. The applicant was contacted to provide documentation of support/non-objection per Section 2.2.1.4.3 of the Applicant Guidebook.
9. The String Similarity Panel has determined that this string is visually similar to an existing TLD (.mil), creating a probability of user confusion.
10. Per the 4 June 2013 New gTLD Program Committee (NGPC) approved [resolution](#) to adopt the "NGPC Scorecard of 1As Regarding Non-Safeguard Advice in the GAC Beijing Communiqué."

The screenshot shows a web browser window with the URL <https://gtldresult.icann.org/application-result/applicationstatus/viewstatus>. The page header includes the ICANN logo, "New Generic Top-Level Domains", and navigation links for "About", "Applicants", "Program Status", and "Media". There are also social media icons for Twitter and Facebook. The main content area is titled "NEW GTLD CURRENT APPLICATION STATUS" and features a search bar with the text "ipiranga" and a "Search" button. To the right of the search bar are links for "Download All PICs" and "View All GAC Advice Responses".

On the left side, there is a "FILTER RESULTS" panel with several dropdown menus: "Type", "Application Status", "Updates", "Objections", "GAC EW", "Contention Sets", and "Has PICs" (which is highlighted in yellow). Below these filters is an "Apply Filters" button. Underneath the filters is a "QUICK SEARCH" section with a link for "IE Result - Pass" and a "Reset All" button.

The main content area displays a message: "There are no applications matching your search/filter criteria." Below this message is a "Notes" section containing a list of 10 numbered items:

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3. **Community:** Based on applicant's answer to question 19
4. **Geographic:** Based on applicant's answer to question 21
5. **Applicant Support:** Three applications have applied for applicant support. See application IDs: 1-1309-46695 (KIDS), 1-1873-71868 (IDN) and 1-2104-81541 (UMMAH)
6. **Format:** In some cases the display of the application data has been adjusted for format consistency
7. The Geographic Names Panel has determined that the string does not fall within the criteria for a geographic name contained in the Applicant Guidebook Section 2.2.1.4.
8. The Geographic Names Panel has determined that the string falls within the criteria for a geographic name contained in the Applicant Guidebook Section 2.2.1.4. The applicant was contacted to provide documentation of support/non-objection per Section 2.2.1.4.3 of the Applicant Guidebook.
9. The String Similarity Panel has determined that this string is visually similar to an existing TLD (.mil), creating a probability of user confusion.
10. Per the 4 June 2013 New gTLD Program Committee (NGPC) approved resolution to adopt the "NGPC Scorecard of 1As Regarding Non-Safeguard Advice in the GAC Beijing Communiqué."

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RESPONDENT'S EXHIBIT

## ANNEX 1 to ICANN NGPC RESOLUTION NO. 2014.02.05.NG01

### GAC Advice (Beijing, Durban, Buenos Aires): Actions and Updates

5 February 2014

	GAC Register #	GAC Advice		Action/Update
<b>Open Items of GAC Advice</b>				
1. WINE and VIN	2013-09-09-wine and vin; 2013-11-20-wine-vin (Buenos Aires Communiqué §3)	<p><u>Follow-up from Durban:</u> The GAC advises the ICANN Board that the GAC has finalized its consideration of the strings .wine and .vin and further advises that the applications should proceed through the normal evaluation process.</p> <p><u>Buenos Aires:</u> The Board may wish to seek a clear understanding of the legally complex and politically sensitive background on this matter in order to consider the appropriate next steps of delegating the two strings. GAC members may wish to write to the Board to further elaborate their views.”</p>		<p>On 28 September 2013, the NGPC noted that it stood ready to hear from GAC members as to the nature of the differences in views expressed in the advice while the NGPC analyzed. In Buenos Aires, ICANN facilitated a dialogue between the applicant for .VIN and the affected non-governmental parties.</p> <p>In response to the GAC’s suggestion in the Buenos Aires Communiqué, the NGPC has commissioned an analysis of the legally complex and politically sensitive background on this matter in the context of the GAC advice in order to consider the appropriate next steps of delegating .WINE and .VIN. The analysis is expected to be completed so that it can be considered by the NGPC when it meets in Singapore.</p>
2. GUANGZHOU and SHENZHEN	2013-11-20-guangzhou; 2013-11-20-shenzhen (Buenos Aires Communiqué §2.a.i.1.a & b)	The GAC advises the Board not to proceed beyond initial evaluation until the agreements between the relevant parties are reached: .guangzhou (IDN in Chinese - application number 1-1121-22691) and .shenzhen (IDN in Chinese - application number 1-1121-82863)	1A	The NGPC accepts this advice. ICANN received notice on 6 December 2013 that the applicants for .GUANGZHOU and .SHENZHEN are withdrawing their applications for consideration from the New gTLD Program. The NGPC will inform the GAC of this new information.

	<b>GAC Register #</b>	<b>GAC Advice</b>		<b>Action/Update</b>
3. SPA	2013-11-20-spa (Buenos Aires Communiqué §2.a.i.1.c)	The GAC advises the Board not to proceed beyond initial evaluation until the agreements between the relevant parties are reached: .spa (application numbers: 1-1619-92115, 1-1309-81322, 1-1110-73648) [Note: Application numbers updated from original text of advice.]	1A	The NGPC accepts this advice. ICANN will not enter into registry agreements with applicants for the identified string at this time. The NGPC notes concern about concluding the discussions with the applicants and will request the GAC to (1) provide a timeline for final consideration of the string, and (2) identify the “interested parties” noted in the GAC advice.
4. YUN	2013-04-11-gTLDStrings; 2013-07-18-gTLDStrings (Buenos Aires Communiqué §2.b)	The GAC notes that the application for .yun (application number 1-1318-12524) has been withdrawn.	1A	The NGPC accepts this advice. ICANN received notice on 15 November 2013 that the applicant of application number 1-1318-12524 for .YUN was withdrawing its applications for consideration from the New gTLD Program. Since application number 1-1318-12524 has been withdrawn, the remaining application for the .YUN string (application 1-974-89210) should continue through the stages of the application process.
5. AMAZON	2013-07-18 – Obj-Amazon (Durban Communiqué §1.1.a.i.1; Buenos Aires Communiqué §2.d)	The GAC advises the ICANN Board that the GAC has reached consensus on GAC Objection Advice according to Module 3.1 part I of the Applicant Guidebook on the following application: .amazon (application number 1-1315-58086) and related IDNs in Japanese (application number 1-1318-83995) and Chinese (application number 1-1318-5591)		ICANN has commissioned an independent, third-party expert to provide additional analysis on the specific issues of application of law at issue, which may focus on legal norms or treaty conventions relied on by Amazon or governments. The analysis is expected to be completed in time for the ICANN Singapore meeting so that the NGPC can consider it in Singapore.

	GAC Register #	GAC Advice	Action/Update
6. IGO PROTECTION S	2013-11-20-IGO (Buenos Aires Communiqué §6.a.i)	<p>The GAC advises the ICANN Board that the GAC, together with IGOs, remains committed to continuing the dialogue with NGPC on finalizing the modalities for permanent protection of IGO acronyms at the second level, by putting in place a mechanism which would: (1) provide for a permanent system of notifications to both the potential registrant and the relevant IGO as to possible conflict if a potential registrant seeks to register a domain name matching the acronym of that IGO; (2) allow the IGO a timely opportunity to effectively prevent potential misuse and confusion; (3) allow for a final and binding determination by an independent third party in order to resolve any disagreement between an IGO and a potential registrant; and (4) be at no cost or of a nominal cost only to the IGO.</p> <p>The GAC looks forward to receiving the alternative NGPC proposal adequately addressing this advice. Initial protections for IGO acronyms should remain in place until the dialogue between the NGPC, the IGOs and the GAC ensuring the implementation of this protection is completed.</p>	<p>On 2 October 2013, the NGPC proposal in response to the GAC's advice in the Durban Communiqué regarding protections for IGO acronyms was submitted to the GAC for its consideration.</p> <p>The NGPC is developing ways to implement the GAC advice, including whether there are mechanisms, other than the Trademark Clearinghouse, that can be used to implement the advice. The NGPC will prepare an alternative proposal for consideration by the GAC.</p> <p>The NGPC adopted a resolution at its 9 January 2014 meeting to extend the initial protections for IGO acronyms while the GAC and NGPC continue to work through outstanding implementation issues.</p> <p>To note: During the Buenos Aires meeting, the GNSO unanimously approved the recommendations in the Final Report of the IGO/INGO Protection PDP Working Group. The Final Report recommended reserving IGO names but not their acronyms. It did allow for the inclusion of acronyms in the TMCH in future rounds if they were included in the TMCH during the current round. It also requested an issue report on possible revisions to the UDRP and URS policies that would allow IGOs to take advantage of these processes. Subject to receiving direction from the Board, the NGPC will: (1) consider the policy recommendations from the GNSO as the NGPC continues to actively develop an approach to respond to the GAC advice on protections for IGOs, and (2) develop a comprehensive proposal to address the GAC advice and the GNSO policy recommendations for consideration by the Board at a subsequent meeting.</p>

	<b>GAC Register #</b>	<b>GAC Advice</b>		<b>Action/Update</b>
7. IOC/RCRC PROTECTION S	2013-07-18 – IOCRC (Durban Communiqué §5.a.i(sic))	The GAC advises the ICANN Board that the same complementary cost neutral mechanisms to be worked out for the protection of acronyms of IGOs be used to also protect the acronyms of the International Committee of the Red Cross (ICRC/CICR) and the International Federation of Red Cross and Red Crescent Societies (IFRC/FICR).		Refer to the update above.
8. RCRC NAMES	2013-11-20-IOC-RCRC (Buenos Aires Communiqué §6.a.i)	The GAC advises the ICANN Board that it is giving further consideration to the way in which existing protections should apply to the words “Red Cross”, “Red Crescent” and related designations at the top and second levels with specific regard to national Red Cross and Red Crescent entities; and that it will provide further advice to the Board on this.	1A	The NGPC accepts this advice.

	GAC Register #	GAC Advice		Action/Update
9. CAT 1 SAFEGUARDS	2013-04-11- Safeguards – Categories -1; 2013-11-20-Cat1- Cat2 (Beijing Communiqué Annex I, Category 1; Buenos Aires Communiqué §1.d.i)	<p><u>Beijing Communiqué</u>: Strings that are linked to regulated or professional sectors should operate in a way that is consistent with applicable laws. These strings are likely to invoke a level of implied trust from consumers, and carry higher levels of risk associated with consumer harm. (Refer to the GAC Register of Advice for the full text of each Category 1 Safeguard.)</p> <p><u>Buenos Aires Communiqué</u>: The GAC advises the ICANN Board to re-categorize the string .doctor as falling within Category 1 safeguard advice addressing highly regulated sectors, therefore ascribing these domains exclusively to legitimate medical practitioners. The GAC notes the strong implications for consumer protection and consumer trust, and the need for proper medical ethical standards, demanded by the medical field online to be fully respected.</p>	1A	<p>The NGPC accepts the advice. The NGPC adopts the implementation framework attached as <a href="http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-2-05feb14-en.pdf">Annex 2 &lt;http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-2-05feb14-en.pdf&gt;</a> to address this advice, and directs the ICANN President and CEO, or his designee, to implement the Category 1 Safeguard advice consistent with the implementation framework.</p> <p>With respect to the additional advice in the Buenos Aires Communiqué on the Category 1 Safeguards, the NGPC accepts the advice to re-categorize the string .doctor as falling within Category 1 safeguard advice addressing highly regulated sectors and ensure that the domains in the .doctor TLD are ascribed exclusively to legitimate medical practitioners.</p>

	GAC Register #	GAC Advice	Action/Update
10. CAT 2 SAFEGUARDS – EXCLUSIVE ACCESS	2013-04-11- Safeguards – Categories -2; 2013-11-20-Cat1- Cat2  (Beijing Communiqué Annex I, Category 2, Item 2; Buenos Aires Communiqué §1.e)	<p><u>Beijing</u>: For strings representing generic terms, exclusive registry access should serve a public interest goal. In the current round, the GAC has identified the following non-exhaustive list of strings that it considers to be generic terms, where the applicant is currently proposing to provide exclusive registry access: .antivirus, .app, .autoinsurance, .baby, .beauty, .blog, .book, .broker, .carinsurance, .cars, .cloud, .courses, .cpa, .cruise, .data, .dvr, .financialaid, .flowers, .food, .game, .grocery, .hair, .hotel, .hotels, .insurance, .jewelry, .mail, .makeup, .map, .mobile, .motorcycles, .movie, .music, .news, .phone, .salon, .search, .shop, .show, .skin, .song, .store, .tennis, .theater, .theatre, .tires, .tunes, .video, .watches, .weather, .yachts, .クラウド [cloud], .ストア [store], .セール [sale], .ファッション [fashion], .家電 [consumer electronics], .手表 [watches], .書籍 [book], .珠宝 [jewelry], .通販 [online shopping], .食品 [food]</p> <p><u>Buenos Aires</u>: The GAC welcomes the Board’s communication with applicants with regard to open and closed gTLDs, but seeks written clarification of how strings are identified as being generic.</p>	<p>ICANN contacted the 186 applicants for strings identified in the GAC’s Category 2 safeguard advice. The applicants were asked to respond by a specified date indicating whether the applied-for TLD will be operated as an exclusive access registry. An overwhelming majority of the applicants (174) indicated that the TLD would not be operated as an exclusive access registry. The NGPC adopted a resolution directing staff to move forward with the contracting process for applicants for strings identified in the Category 2 Safeguards that were prepared to enter into the Registry Agreement as approved, since moving forward with these applicants was consistent with the GAC’s advice.</p> <p>Twelve applicants responded that the TLD would be operated as an exclusive access registry. These 12 applicants have applied for the following strings: .BROKER, .CRUISE, .DATA, .DVR, .GROCERY, .MOBILE, .PHONE, .STORE, .THEATER, .THEATRE and .TIRES. Staff requested the applicants to provide an explanation of how the proposed exclusive registry access serves a public interest goal. The responses have been received. ICANN staff will forward the responses to the NGPC and the GAC so that the responses can be considered prior to the Singapore meeting.</p> <p>The NGPC accepts the advice in the Buenos Aires Communiqué. As requested in in the Buenos Aires Communiqué, the NGPC has provided a written clarification to the GAC of how strings are identified as being generic.</p>

	GAC Register #	GAC Advice		Action/Update
11. CAT 2 SAFEGUARDS – RESTRICTED ACCESS	2013-04-11- Safeguards – Categories -2; 2013-11-20-Cat1- Cat2 (Beijing Communiqué Annex I, Category 2, Item 2; Buenos Aires Communiqué §1.a.i.1)	<p><u>Beijing Communiqué</u>: As an exception to the general rule that the gTLD domain name space is operated in an open manner registration may be restricted, in particular for strings mentioned under category 1 above. In these cases, the registration restrictions should be appropriate for the types of risks associated with the TLD. The registry operator should administer access in these kinds of registries in a transparent way that does not give an undue preference to any registrars or registrants, including itself, and shall not subject registrars or registrants to an undue disadvantage.</p> <p><u>Buenos Aires Communiqué</u>: The GAC highlights the importance of its Beijing advice on ‘Restricted Access’ registries, particularly with regard to the need to avoid undue preference and/or undue disadvantage. The GAC requests a briefing on whether the Board considers that the existing PIC specifications (including 3c) fully implements this advice.</p>	1A	<p>The NGPC accepted the GAC’s Beijing advice regarding Category 2 (Restricted Access). To implement the advice, the NGPC revised Specification 11 – Public Interest Commitments in the New gTLD Registry Agreement. The PIC Spec requires that “Registry Operator will operate the TLD in a transparent manner consistent with general principles of openness and non-discrimination by establishing, publishing and adhering to clear registration policies.”</p> <p>The NGPC accepts the advice in the Buenos Aires Communiqué. As requested, the NGPC has provided a written clarification to the GAC on whether the Board considers that the existing PIC specifications (including 3c) fully implements this advice.</p>

	GAC Register #	GAC Advice	Action/Update
12. HALAL AND ISLAM	2103-04-11- Religious Terms; 2013-11-20- islam-halal (Beijing Communiqué §1.a.ii; Buenos Aires Communiqué §7)	<p>The GAC advises the Board that with regard to Module 3.1 part II of the Applicant Guidebook, the GAC recognizes that religious terms are sensitive issues. Some GAC members have raised sensitivities on the applications that relate to Islamic terms, specifically .islam and .halal. The GAC members concerned have noted that the applications for .islam and .halal lack community involvement and support. It is the view of these GAC members that these applications should not proceed.</p> <p>GAC took note of letters sent by the OIC and the ICANN Chairman in relation to the strings .islam and .halal. The GAC has previously provided advice in its Beijing Communiqué, when it concluded its discussions on these strings. The GAC Chair will respond to the OIC correspondence accordingly, noting the OIC's plans to hold a meeting in early December. The GAC chair will also respond to the ICANN Chair's correspondence in similar terms.</p>	<p>The NGPC adopted a resolution to accept this advice at its 4 June 2013 meeting. Pursuant to Section 3.1.ii of the AGB, the NGPC and some members of the GAC met during the ICANN 47 meeting in Durban to discuss the concerns about the applications.</p> <p>On 24 October 2013 decisions were posted in favor of the applicant on the community objections filed by the Telecommunications Regulatory Authority of the UAE.</p> <p>In a 4 November 2013 letter from the Organization of Islamic Cooperation (OIC) to the GAC Chair, the OIC requested that its letter be considered an "official opposition of the Member States of the OIC towards probable authorization by the GAC allowing the use of [...] .ISLAM and .HALAL by any entity not representing the collective voice of the Muslim people."</p> <p>In a 11 November 2013 letter to the GAC Chair, the NGPC indicated that before it takes action on the strings, it will wait for any additional GAC input during the Buenos Aires meeting or resulting GAC Communiqué. The Buenos Aires Communiqué took note of the letters sent by the OIC, but did not offer any additional advice to the Board. The OIC also adopted a resolution in December 2013 communicating its official objection to the use of the applied-for .ISLAM and .HALAL TLDs.</p> <p>The NGPC takes note of the significant concerns expressed during the dialogue, and additional opposition raised, including by the OIC, which represents 1.6 billion members of the Muslim community. The NGPC has sent a letter to the applicant, which is available <a href="http://www.icann.org/en/news/correspondence/cr-ocker-to-abbasnia-07feb14-en.pdf">here</a> &lt;<a href="http://www.icann.org/en/news/correspondence/cr-ocker-to-abbasnia-07feb14-en.pdf">http://www.icann.org/en/news/correspondence/cr-ocker-to-abbasnia-07feb14-en.pdf</a>&gt;.</p>

	<b>GAC Register #</b>	<b>GAC Advice</b>		<b>Action/Update</b>
13. [PROTECTIONS FOR CHILDREN]	2013-11-20-Cat1- Cat2 (Buenos Aires Communiqué §1.e)	The GAC considers that new gTLD registry operators should be made aware of the importance of protecting children and their rights consistent with the UN Convention on the Rights of the Child.	1A	The NGPC acknowledges the GAC's view. ICANN will contact all new gTLD registry operators to make them aware of the importance of protecting children and their rights consistent with the UN Convention on the Rights of the Child.
14. [AUCTIONS]	2013-11-20-Cat1- Cat2 (Buenos Aires Communiqué §1.b)	The GAC requests a briefing on the public policy implications of holding auctions to resolve string contention (including community applications).	1A	The NGPC accepts this advice. The NGPC will provide a briefing to the GAC regarding the public policy implications of holding auctions to resolve string contention (including community applications).
15. [SPECIAL LAUNCH PROGRAM]	2013-11-20- GeoTLDs (Buenos Aires Communiqué §5.a.i)	The GAC advises the ICANN Board that ICANN provide clarity on the proposed launch program for special cases as a matter of urgency.	1A	The NGPC accepts this advice. ICANN published materials in December 2013 to provide clarity to the community on the proposed launch program for special cases. < <a href="http://newgtlds.icann.org/en/about/trademark-clearinghouse/launch-application-guidelines-19dec13-en.pdf">http://newgtlds.icann.org/en/about/trademark-clearinghouse/launch-application-guidelines-19dec13-en.pdf</a> > Additionally, the NGPC has provided a briefing to the GAC on this issue.

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**RESPONDENT'S EXHIBIT**



April 14, 2014

Dr. Steve Crocker, Chairman of the Board  
 Mr. Fadi Chehadé, President & CEO  
 Mr. Cherine Chalaby, Chair of the New gTLD Committee  
 Members of the New gTLD Program Committee  
 Internet Corporation for Assigned Names and Numbers  
 12025 Waterfront Drive, Suite 300  
 Los Angeles, CA 90094-2536

Re: Amazon's Response to M. Passa's Expert Report on .AMAZON (and related IDNs)

Dear Dr. Crocker, Messrs. Chehadé and Chalaby, and Members of the ICANN Board of Directors  
 New gTLD Program Committee,

Thank you for the opportunity to comment on the independent, third-party expert M. Jerome Passa's legal opinion ("Expert Report") regarding the application of law in the matter of .AMAZON and related IDNs (.AMAZON").

Amazon EU S.a.r.l ("Amazon") has tried to negotiate with the governments involved and, despite our best efforts, is disappointed that this matter has reached a point of impasse and is politicized in many fora. As it appears the New gTLD Program Committee ("NGPC") will be required to make a decision in this matter, we reiterate the points we have made throughout this process: Amazon submitted applications based on a community-created process (in which governments were involved); we followed the rules set forth in the Applicant Guidebook ("AGB"); we passed ICANN's evaluation process; successfully defended against a community objection filed by the Independent Objector;<sup>1</sup> and should be allowed to contract on our registries like any other applicant in a similar position.

We agree with M. Passa's core conclusions, which compel the same result:

1. Existing law on sovereign rights and geographical indications does not support blocking .AMAZON;<sup>2</sup> and
2. Granting .AMAZON would not prejudice the objecting governments as they may still represent the Amazonia region through future geographical gTLDs, such as .AMAZONIA or .AMAZONAS.<sup>3</sup>

<sup>1</sup> As the ICC ruled in that case, "'Amazon' has been used as a brand, trademark and domain name for nearly two decades also in the States arguably forming part of the Amazon Community. It is even registered in those States. There is no evidence, or even allegation, that this has caused any harm to the Amazon Community's interests, or has led to a loss of reputation linked to the name of the region or community or to any other form of damage." ICC Decision Case No. Exp/396/ICANN/13, cl. 102.

<sup>2</sup> Expert Report at 9.

<sup>3</sup> Id. at 10.

The Expert Report also contains several inaccuracies, however, that require correction.

### **GAC Advice on Amazon is Inconsistent with International Law**

As noted in our August 23, 2013 response (the "Response") to the Governmental Advisory Committee's Durban Communiqué ("GAC Advice"), international law and national legal systems have well-established mechanisms for protecting terms, including use of geographical names. These mechanisms fall into four major categories: (1) Intellectual Property; (2) Regulatory Recognition; (3) National Sovereignty; and (4) Indigenous Rights. The Expert Report only addresses the first of these four categories (intellectual property) in any detail.<sup>4</sup> Though the Expert Report correctly concludes that sovereign rights under intellectual property regimes support Amazon's application,<sup>5</sup> the same is true for each of these categories.

We have never argued, despite the question posed to the Expert, that Amazon is entitled to .AMAZON or that ICANN is obliged to award us .AMAZON based on intellectual property rights alone. Like other applicants, we followed the Applicant Guidebook ("AGB"); we applied for .AMAZON and IDN variants in accordance with the rules of the AGB; we are not using the term in a geographic manner; we passed the ICANN evaluation process, including the Geographic Names Panel; we successfully defended against a community objection filed by the Independent Objector; and, the applied-for gTLDs are not any of the banned terms found in the AGB. It is through successfully following the application process, as well as owning separate, legitimate interests to use and enforce our mark in a lawful manner, that Amazon should be allowed to proceed to contracting, as any other applicant would. In short, Amazon has a legitimate claim to make a non-geographic use of the term 'Amazon', including by applying for a gTLD reflecting its globally recognized and well-known mark.<sup>6</sup> Indeed, with this ultimate conclusion, the Expert agrees.<sup>7</sup>

Further, we agree with the Expert Report that:

Beyond the law of geographical indications, the assignment of 'amazon' to Amazon would not in any event be prejudicial to the objecting states who, since they have no reason for linguistic reasons to reserve 'amazon', could always if they so wished reserve a new

<sup>4</sup> The expert notes at the outset he was asked by ICANN to address only whether under intellectual property laws, governments could claim legally recognized sovereign or geographic rights in the term 'Amazon' or whether ICANN was 'obliged' to grant .AMAZON based on pre-existing trademark registrations.

<sup>5</sup> "The [expert] has been consulted on the specific issue of whether, on strictly legal grounds in the field of intellectual property law relating, in particular, to the rules of international law or fundamental principles, ICANN would be bound [] to refuse to assign [.AMAZON] in order to protect prior rights as mentioned above." Expert Report at 2.

<sup>6</sup> From the .AMAZON Applications response to Q.18(a) on the mission of the .AMAZON registry: "To provide a unique and dedicated platform for Amazon while simultaneously protecting the integrity of its brand and reputation. .AMAZON registry will: (1) Provide Amazon with additional controls over its technical architecture, offering a stable and secure foundation for online communication and interaction. (2) Provide Amazon a further platform for innovation. (3) Enable Amazon to protect its intellectual property rights."

<sup>7</sup> "At the very most, the Amazon company's trademarks permit it to claim a legitimate interest for applying for assignment of 'amazon.'" Expert Report at 10.

gTLD such as '.amazonia' or '.amazonas' which would create no risk of confusion with '.amazon.'<sup>8</sup>

Amazon has repeatedly agreed to co-exist with any future geographic gTLD applied for by the Governments of the Amazonia region for .AMAZONIA, .AMAZONAS, or .AMAZONICA. From the time concerns were raised, we reiterated this offer in our numerous attempts to negotiate with the Governments as well as in writing to ICANN. As the Expert agrees, the grant of .AMAZON does not block local governments or people from representing their region in a gTLD. The terms used by the vast majority of the people in the region are still available for future registration and use. Amazon should not be penalized, however, for applying when the Governments did not (unlike the Swiss Confederation for .SWISS; the League of Arab States for the .ARAB IDN; or the City of Paris for .PARIS, among others).<sup>9</sup> Nor should ICANN create rights for the governments that the governments themselves have not obtained through international and national law – be it intellectual property or otherwise.

### **Accepting GAC Advice in Contravention to International Law and ICANN's Bylaws Results in a Reversal of Multistakeholder-Created Consensus Policy**

GAC Advice should not be used to override years of multistakeholder-created consensus policy, which the AGB represents. The 2007 GAC Principles are now being cited to by the GAC to retroactively modify rules and revive proposals previously rejected by the multistakeholder ICANN Community and Board. The Board has already rejected GAC advice that the GAC has a carte blanche right to block any gTLD application based on principles of "national sensitivities" or broad-based, undefined geographic terms or national interests.<sup>10</sup> Similarly, the GNSO's initial new gTLD policy recommendations<sup>11</sup> and adoption of the final AGB represent a rejection of those Principles. ICANN's willingness to grant the GAC this right after GNSO consensus policy and Board approval sets a dangerous precedent that has potentially damaging ramifications for both current and future gTLD applicants (and potentially, based on recent suggestions from a GAC Working Group, on future rounds and rules applying to second-level names in new gTLDs), and for the transparency, predictability and non-discriminatory nature of the new gTLD application process.

Amazon recognizes the various sensitivities this issue presents to the Amazonia region and has tried on numerous occasions to come to a mutual resolution. As recently as the Singapore ICANN meeting, however, these efforts have met with resistance to conducting negotiations on any level. Cultural diversity is not constrained by allowing .AMAZON to proceed; the region and its territories,

<sup>8</sup> Expert Report at 10. Indeed, the ICC Community Objection decision reiterates this. "[T]here is no evidence either that internet users will be incapable of appreciating the difference between the Amazon group and its activities and the Amazon River and the Amazon Community, or that Amazonia and its specificities and importance for the world will be removed from public consciousness, with the dire consequences emphasized by the IO. Were a dedicated gTLD considered essential for the interests of the Amazon Community, other equally evocative strings would presumably be available. "Amazonia" springs to mind." ICC Decision Case No. Exp/396/ICANN/13, cl. 103.

<sup>9</sup>"Beyond the law of geographical indications, the assignment of '.amazon' to Amazon would not in any event be prejudicial to the objecting states who, since they have no reason for linguistic reasons to reserve '.amazon', could always if they so wished reserve a new gTLD such as '.amazonia' or '.amazonas' which would create no risk of confusion with '.amazon'." Expert Report at 10.

<sup>10</sup> See Amazon Response, p. 14-16.

<sup>11</sup>ICANN GNSO Final Report - Introduction of New Generic Top-Level Domains (8 August 2007).

identities, and cultural identity can still be fully represented by the terms commonly used and recognized as representing the region – .amazonia, .amazonas and .amazonica.

If ICANN allows the GAC to supersede the community-derived process and policy found in the AGB (which included Board review and rejection of certain of the 2007 GAC Principles, including those cited to now by certain members of the GAC) governments will have the final say over multistakeholder and community driven policy, and established international/national law. This sets a dangerous precedent for the transparency, predictability and non-discriminatory nature of the new gTLD application process. It injects uncertainty on participants; it creates and affirms a form of sui generis rights for governments not supported by international or national law; it penalizes a legitimate applicant, with legitimate rights, and which has otherwise cleared through all stages of the applicant process; and it sets a dangerous precedent for multistakeholder created policy.

We thank the NGPC for its time and consideration of our comments, and ask the NGPC to reject the GAC Advice on .AMAZON and allow our applications to proceed. We welcome any questions and would be happy to discuss this and any other submissions at your convenience.

With best regards,



Scott Hayden  
Vice President, Intellectual Property - Amazon

**R-26**

**RESPONDENT'S EXHIBIT**



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## Minutes | Meeting of the New gTLD Program Committee

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10 Sep 2013

**Note: On 10 April 2012, the Board established the New gTLD Program Committee, comprised of all voting members of the Board that are not conflicted with respect to the New gTLD Program. The Committee was granted all of the powers of the Board (subject to the limitations set forth by law, the Articles of incorporation, Bylaws or ICANN's Conflicts of Interest Policy) to exercise Board-level authority for any and all issues that may arise relating to the New gTLD Program. The full scope of the Committee's authority is set forth in its charter at <http://www.icann.org/en/groups/board/new-gTLD>.**

**A Special Meeting of the New gTLD Program Committee of the ICANN Board of Directors was held telephonically on 10 September 2013 at 13:00 UTC.**

**Committee Chairman Cherine Chalaby promptly called the meeting to order.**

**In addition to the Chair the following Directors participated in all or part of the meeting: Fadi Chehadé (President and CEO, ICANN), Chris Disspain, Bill Graham, Olga Madruga-Forti, Erika Mann, Ray Plzak,**

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**Donkin was in attendance as an invited (non-voting) observer for item 1 on the main Agenda.**

**ICANN Staff in attendance for all or part of the meeting: Akram Atallah, President, Generic Domains Division; John Jeffrey, General Counsel and Secretary; Megan Bishop; Michelle Bright; Samantha Eisner; Allen Grogan; Dan Halloran; Jamie Hedlund; Elizabeth Le; Karen Lentz; Cyrus Namazi; Olof Nordling; David Olive; Karine Perset; Erika Randall; Amy Stathos; Christine Willett; and Mary Wong.**

**These are the Minutes of the Meeting of the New gTLD Program Committee, which took place on 10 September 2013.**

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1. **Consent Agenda**
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1. Consent Agenda

a. Approval of NGPC Meeting Minutes

The Chair introduced the item on the Consent Agenda. George Sadowsky moved and Chris Disspain seconded the resolution in the Consent Agenda and the Committee took the following action:

Resolved (2013.09.10.NG01), the NGPC approves the minutes of the 13 July 2013 and 17 July 2013 New gTLD Program Committee Meetings.

**All members of the Committee present voted in favor of Resolution 2013.09.10.NG01. Gonzalo Navarro was not available to vote on the Resolution. The Resolution carried.**

2. Main Agenda

a. Update on String Similarity

The Chair provided an overview of the items on the main agenda to be considered by the Committee, and noted that ICANN Board Member Bruce Tonkin would participate in the discussion on the first agenda item to provide input on the string similarity review process.

Bruce Tonkin provided the Committee with an overview of how the string similarity standards were developed, explaining that string similarity is based on the GNSO Policy Recommendation Number 2, which states that strings must not be confusingly similar to an existing or applied-for top-level domain.

Bruce noted that when developing the string similarity standards, the GNSO considered the "confusingly similar" standard used in trademark law in various jurisdictions, and the Paris Convention for protection of intellectual property.

Bruce provided the Committee with a summary of the string similarity review process in initial evaluations, which focuses on visual similarity, and the string confusion objection process. Bruce noted that there was a key decision made early on in the iterations of the Applicant Guidebook that ICANN, in the initial evaluation stage, would only examine strings for visual confusion.

Bruce also explained the role of the string confusion objections in the process, and noted that the policy was to allow for a broader look at confusion – not just visual confusion. Bruce commented that that the string similarity objection is a dispute between two parties, and ICANN is not involved.

Bruce commented that some applicants who have received unfavorable determinations from the string similarity review process or the string similarity objection process have proceeded to invoke the Reconsideration Request process provided for in the ICANN Bylaws.

Mike Silber noted three key issues for the Committee to consider with regard to the string similarity decisions. Mike asked the Committee to consider what, if anything, should be done to address the perceived inconsistency between the findings of the various string confusion objection panels. Mike stated that the Committee also should consider the decisions of the string similarity review panel and whether there are changes needed in future rounds in light of the concerns raised in the current round. Mike noted that staff would prepare a briefing paper providing more details about these concerns for discussion at the Committee's next meeting.

The Chair inquired whether Mike was suggesting that any action would only impact future rounds. Erika Mann asked whether Mike recommended that the Committee should ask the experts to provide consistent opinions. Mike clarified that the Committee should first understand whether there is a genuine problem before it takes action. Additionally, Mike recommended that the Committee needs to better understand the consequences of taking action to impact the current round.

Akram Atallah recommended that the Committee keep separate the issues of the string similarity review, which looked only at visual similarity, from the string confusion objection. Akram indicated that staff would prepare a paper regarding these issues for future conversation.

After the conclusion of the discussion, Bruce excused himself from the remainder of the meeting.

b. BGC recommendation on Reconsideration Request 13-5

The Chair introduced the item to the Committee and Amy Stathos presented an overview of Reconsideration Request 13-5, including the Board Governance Committee's (BGC) recommendation to the Committee. Amy noted that the requester argued that the decision of the string similarity review panel should be reversed so that "hotels" and "hoteis" are not in a contention set with each other. Amy also reminded the Committee of the basis in the Bylaws for Reconsideration Requests. The BGC determined that the requester had not stated proper grounds for reconsideration.

George Sadowsky stated that he understood that the BGC did the right thing, but thought the end result that was contrary to ICANN's and the user's best interests. George noted he intended to abstain from voting as a result.

Olga Madruga-Forti noted that she intended to abstain from the vote because there was not sufficient rationale provided for why the string similarity review panel made its determination.

The Chair noted the party submitting the Reconsideration Request essentially just disagrees with the decision. Because the process was followed, the Chair noted that the Committee should not accept the Reconsideration Request.

Ray Plzak agreed that the process was followed, but noted that the process needs to be reviewed to potentially add a mechanism that would allow persons who don't agree with the outcome to make an objection, other than using a Reconsideration Request. Ray recommended the Committee send a strong signal to the BGC, or adopt a resolution recommending that the BGC consider development of a different mechanism to provide an avenue for the community to appeal the outcome of a decision based on the merits. Olga recommended that in the future, a remand or appeals mechanism may help alleviate the concerns noted.

Bill Graham agreed with Ray's suggestion, and noted that generally, there is a considerable level of discomfort and dissatisfaction with the process as expressed by Committee members. The Chair agreed with Bill's sentiment.

The General Counsel and Secretary noted that ICANN has tried to encourage more use of the ombudsman, or other accountability mechanisms for these types of concerns.

The President and CEO moved and Ray Plzak seconded the resolution.

The Committee then took the following action:

Whereas, Booking.com B.V.'s ("Booking.com") Reconsideration Request, Request 13-5, sought

reconsideration of the ICANN staff action of 26 February 2013, when the results of the String Similarity Panel were posted for the New gTLD Program, placing the applications for .hotels and .hoteis into a string similarity contention set.

Whereas, the BGC considered the issues raised in Reconsideration Request 13-5.

Whereas, the BGC recommended that Reconsideration Request 13-5 be denied because Booking.com has not stated proper grounds for reconsideration.

Resolved (2013.09.10.NG02), the New gTLD Program Committee adopts the BGC Recommendation on Reconsideration Request 13-5, which can be found at <http://www.icann.org/en/groups/board/governance/reconsideration/recommendation-booking-01aug13-en.pdf> [PDF, 117 KB].

**The Chair took a voice vote of Resolution 2013.09.10.NG02. Cherine Chalaby, Fadi Chehadé, Chris Disspain, Bill Graham, and Mike Silber voted in favor of Resolution 2013.09.10.NG02. Olga Madruga-Forti, Ray Plzak, George Sadowsky and Kuo-Wei Wu abstained from voting on Resolution 2013.09.10.NG02. Erika Mann and Gonzalo Navarro were not available to vote on Resolution 2013.09.10.NG02. The Resolution carried.**

### Rationale for Resolution 2013.09.10.NG02

ICANN's Bylaws call for the Board Governance Committee to evaluate and make recommendations to the Board with respect to Reconsideration Requests. See Article IV, section 3 of the Bylaws. The New gTLD Program Committee ("NGPC"), bestowed with the powers of the Board in this instance, has reviewed and thoroughly considered the BGC Recommendation on Reconsideration Request 13-5 and finds the analysis sound.

Having a reconsideration process whereby the BGC reviews and, if it chooses, makes a recommendation to the Board/NGPC for approval positively affects ICANN's transparency and accountability. It provides an avenue for the community to ensure that staff and the Board are acting in accordance with ICANN's policies, Bylaws, and Articles of Incorporation.

The Request seeks a reversal of the 26 February 2013 decision of the String Similarity Review Panel (the "Panel") to place Booking.com's application for .hotels in the same contention set as .hoteis. Specifically, Booking.com asserted that its applied for string of .hotels can co-exist in the root zone with the applied for string .hoteis without concern of confusability, and therefore, .hotels should not have been placed in the same contention set with .hoteis.

The Request calls into consideration: (1) whether the Panel violated any policy or process in conducting its visual similarity review of Booking.com's application; and (2) whether the NGPC has the ability to overturn the Panel's decision on .hotels/.hoteis on the basis that the decision was provided as an "advice to ICANN" and that ICANN made the ultimate decision to accept that advice.

The BGC noted that a similar reconsideration request was previously submitted by Booking.com on 28 March 2013 and placed on hold pending the completion of a request pursuant to ICANN's Documentary Information Disclosure Policy. Therefore, this Request relates back to the date of the original filing and should be evaluated under the Bylaws that were in effect from 20 December 2012 through 10 April 2013.

In consideration of the first issue, the BGC reviewed the grounds stated in the Request, including the attachments, and concluded that Booking.com failed to adequately state a Request for Reconsideration of Staff action because they failed to identify any policy or process that was violated by Staff. The BGC noted that Booking.com does not suggest that the process for String Similarity Review set out in the Applicant Guidebook was not followed, or that ICANN staff violated any established ICANN policy in accepting the Panel's decision to place .hotels and .hoteis in the same contention set. Rather, Booking.com seeks to supplant what it believes the review methodology for assessing visual similarity should have been as opposed to the methodology set out in Section 2.2.1.1.2 of the Applicant Guidebook and asks that the BGC (and the Board through the New gTLD Program Committee) retry the 26 February 2013 decision based upon its proposed methodology. The BGC concluded that this is not sufficient ground for Reconsideration because the Reconsideration process is not available as a mechanism to re-try the decisions of the evaluation panels.

With respect to Booking.com's contention that the 26 February 2013 decision was taken without material information, such as that of Booking.com's linguistic expert's opinion or other "information that would refute the mistaken contention that there is likely to be consumer confusion between '.hotels' and '.hoteis'", the BGC concluded that there is no process in the String Similarity Review for applicants to submit additional information. As ICANN has explained to Booking.com in response to its DIDP requests for documentation regarding the String Similarity Review, the Review was based upon the methodology in the Applicant Guidebook, supplemented by the Panel's process documentation; the process does not allow for additional inputs. The BGC noted that Booking.com's disagreement as to whether the methodology should have resulted in a finding of visual similarity does not mean that ICANN (including the third party vendors performing String Similarity Review) violated any policy in reaching the decision (nor does it support a conclusion that the decision was actually wrong).

In consideration of the second issue, the BGC determined that Booking.com's suggestion that the Board (through the NGPC) has the ability to overturn the Panel's decision on .hotels/.hoteis because the Panel merely provided "advice to ICANN" and that ICANN made the ultimate decision to accept that advice is based upon inaccurate conclusions of the String Similarity Review process. As such, the BGC concluded that Booking.com has not stated sufficient grounds for reconsideration. The BGC noted that all applied for strings are reviewed the Panel according to the standards and methodology of the visual string similarity review set out in the Applicant Guidebook. The Guidebook clarifies that once contention sets are formed by the Panel, ICANN will notify the applicants and will publish results on its website. (AGB, Section 2.2.1.1.1.) Whether the results are transmitted as "advice" or "outcomes" or "reports", ICANN had always made clear that it would rely on the advice of its evaluators in the initial evaluation

stage of the New gTLD Program, subject to quality assurance measures. The subsequent receipt and consideration of GAC advice on singular and plural strings does not change the established process for the development of contention sets based on visual similarity as the ICANN Board is required under the Bylaws to consider GAC Advice on issues of public policy, such as singular and plural strings. The BGC concluded that Booking.com is actually proposing a new and different process when it suggests that ICANN should perform substantive review (instead of process testing) over the results of the String Similarity Review Panel's outcomes prior to the finalization of contention sets.

In addition to the above, the full BGC Recommendation that can be found at <http://www.icann.org/en/groups/board/governance/reconsideration/recommendation-booking-01aug13-en.pdf> [PDF, 117 KB] and that is attached to the Reference Materials to the Board Submission supporting this resolution, shall also be deemed a part of this Rationale.

Adopting the BGC's recommendation has no financial impact on ICANN and will not negatively impact the systemic security, stability and resiliency of the domain name system.

This decision is an Organizational Administrative Function that does not require public comment.

Members of the Committee who abstained from voting offered voting statements. Ray Plzak noted that he abstained from voting because he is disappointed in what is being done to remedy the situation. Ray would like to see more resolve to fix the process.

Olga Madruga-Forti stated that the BGC has done an appropriate job of applying a limited review standard to the application for reconsideration, but unfortunately, in this circumstance, to apply that limited review accompanied by a lack of information regarding the rationale of the string similarity review panel is not possible in a logical and fair manner. The public interest would not be served by applying the limited review standard without proper information on the basis and reasoning for the decision of the panel. In my opinion, the public interest would be better served by abstaining and continuing to explore ways to establish a better record of the rationale of the string similarity review panel in circumstances such as this.

Kuo-Wei Wu agreed with the voting statements of Ray and Olga.

George Sadowsky provided the following voting statement: I have a strong concern regarding the ratification of the BGC recommendation to deny the reconsideration request regarding string contention between .hoteis and .hotels, and I therefore have therefore abstained when the vote on this issue was taken.

The reconsideration process is a very narrowly focused instrument, relying solely upon investigating deviations from established and agreed upon process. As such, it can be useful, but it is limited in scope. In particular, it does not address situations where process has in fact been followed, but the results of such process have been regarded, sometimes quite widely, as

being contrary to what might be best for significant or all segments of the ICANN community and/or Internet users in general.

The rationale underlying the rejection of the reconsideration claim is essentially that the string similarity process found that there was likely to be substantial confusion between the two, and that therefore they belonged in a contention set. Furthermore, no process has been identified as having been violated and therefore there is nothing to reconsider.

As a Board member who is aware of ICANN's Bylaws, I cannot vote against the motion to deny reconsideration. The motion appears to be correct based upon the criteria in the Bylaws that define the reconsideration process and the facts in this particular case.

However, I am increasingly disturbed by the growing sequence of decisions that are based upon a criterion for user confusion that, in my opinion, is not only both incomplete and flawed, but appears to work directly against the concept that users should not be confused. I am persuaded by the argument made by the proponents of reconsideration in this case that users will in fact not be confused by .hoteis and .hotels, since if they enter the wrong name, they are very likely to be immediately confronted by information in a language that they did not anticipate.

Confusion is a perceptual issue. String similarity is only one consideration in thinking about perceptual confusion and in fact it is not always an issue. In my opinion, much more perceptual confusion will arise between .hotel and .hotels than between .hotels and .hoteis. Yet if we adhere strictly to the Guidebook and whatever instructions have or have not been given to string similarity experts, it is my position that we work against implementing decisions that assist in avoiding user confusion, and we work in favor of decisions that are based upon an incorrect, incomplete and flawed *ex ante* analysis of the real issues with respect to user confusion.

The goal of the string similarity process is the minimization of user confusion and ensuring user trust in using the DNS. The string similarity exercise is one of the means in the new gTLD process to minimize such confusion and to strengthen user trust. In placing our emphasis, and in fact our decisions, on string similarity only, we are unwittingly substituting the means for the goal, and making decisions regarding the goal on the basis of a means test. This is a disservice to the Internet user community.

I cannot and will not vote in favor of a motion that reflects, directly or indirectly, an unwillingness to depart from what I see as such a flawed position and which does not reflect in my opinion an understanding of the current reality of the situation.

The Committee agreed to discuss the process further at its meeting in Los Angeles.

c. GAC Communiqué Durban – Comprehensive Review of the Scorecard

Chris Disspain led the Committee through a discussion of each of the items on the proposed scorecard to address the GAC's advice in the Durban Communiqué. Chris noted that the window for applicants to respond to the GAC's advice had closed and the comments were available for consideration by the Committee.

The Committee discussed that additional time was needed to consider its position on the GAC consensus objection advice concerning .AMAZON given the information presented in the applicant's response.

Chris noted that recently, a series of communications concerning the .THAI application were provided to the Committee, which assert that the GAC's advice was not valid. Chris clarified that GAC's position in respect to its consensus advice on the application for .THAI is supported by the government of Thailand.

Chris discussed the proposed position in the scorecard for .SPA, .YUN, .GUANGZHOU, and .SHENZHEN. Kuo-Wei Wu asked whether the proposed response in the scorecard applied to all strings with geographic indicators. Chris clarified that the scorecard only considers the strings for which the GAC issued advice.

The Committee also discussed the new correspondence from the GAC regarding .WINE and .VIN. Heather Dryden acknowledged the complexity of the issue, and noted that even though the GAC did not arrive at consensus agreement, there is benefit in increasing the Committee's understanding about the reasons for the differing views that exist among the members in the GAC on the applications for .VIN and .WINE. The Committee decided to consider the advice at its next meeting in Los Angeles.

The Committee considered the remaining items in the scorecard.

Chris Disspain moved and George Sadowsky seconded the resolution.

The Committee then took the following action:

Whereas, the GAC met during the ICANN 47 meeting in Durban and issued a Communiqué on 18 July 2013 ("Durban Communiqué").

Whereas, on 1 August 2013, ICANN posted the Durban Communiqué and officially notified applicants of the advice <<http://newgtlds.icann.org/en/announcements-and-media/announcement-01aug13-en>>, triggering the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1.

Whereas, the NGPC met on 12 August 2013 to consider a plan for responding to the GAC's advice on the New gTLD Program, transmitted to the Board through its Durban Communiqué.

Whereas, the NGPC has considered the applicant responses submitted during the 21-day applicant response period, and the NGPC has identified items of advice in the attached

scorecard where its position is consistent with the GAC's advice in the Durban Communiqué.

Whereas, the NGPC developed a scorecard to respond to the GAC's advice in the Durban Communiqué similar to the one used to address the Beijing Advice as well as during the GAC and the Board meetings in Brussels on 28 February and 1 March 2011, and has identified where the NGPC's position is consistent with GAC advice, noting those as "1A" items.

Whereas, the NGPC is undertaking this action pursuant to the authority granted to it by the Board on 10 April 2012, to exercise the ICANN Board's authority for any and all issues that may arise relating to the New gTLD Program.

Resolved (2013.09.10.NG03), the NGPC adopts the "ICANN Board New gTLD Program Committee Scorecard in response to GAC Durban Communiqué" (10 September 2013), attached as [Annex 1](#) [PDF, 119 KB] to this Resolution, in response to the items of GAC advice in the Durban Communiqué as presented in the scorecard.

**All members of the Committee present voted in favor of Resolution 2013.09.10.NG03. Erika Mann and Gonzalo Navarro were not available to vote on Resolution 2013.09.10.NG03. The Resolution carried.**

## Rationale for Resolution 2013.09.10.NG03

### Why the NGPC is addressing the issue?

Article XI, Section 2.1 of the ICANN Bylaws <[http://www.icann.org/en/about/governance/bylaws – XI](http://www.icann.org/en/about/governance/bylaws-XI)> permit the GAC to "put issues to the Board directly, either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision to existing policies." The GAC issued advice to the Board on the New gTLD Program through its Durban Communiqué dated 18 July 2013. The ICANN Bylaws require the Board to take into account the GAC's advice on public policy matters in the formulation and adoption of the policies. If the Board decides to take an action that is not consistent with the GAC advice, it must inform the GAC and state the reasons why it decided not to follow the advice. The Board and the GAC will then try in good faith to find a mutually acceptable solution. If no solution can be found, the Board will state in its final decision why the GAC advice was not followed.

### What is the proposal being considered?

The NGPC is being asked to consider accepting the GAC's Durban advice as described in the attached ICANN Board New gTLD Program Committee Scorecard in response to GAC Durban Communiqué" (10 September 2013). As noted in the scorecard, most items of advice are scored as "1A," which indicates that the NGPC's position is consistent with GAC advice as described in the scorecard.

### Which stakeholders or others were consulted?

On 1 August 2013, ICANN posted the GAC advice and officially notified applicants of the advice <<http://newgtlds.icann.org/en/announcements-and-media/announcement-01aug13-en>>, triggering the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1. The complete set of applicant responses are provided at: <http://newgtlds.icann.org/en/applicants/gac-advice/durban47>. The NGPC has considered the applicant responses in formulating its response to the GAC advice as applicable.

#### **What concerns or issues were raised by the community?**

As part of the 21-day applicant response period, several of the applicants indicated that they have entered into dialogue with the affected parties, and they anticipated reaching agreement on the areas of concern. Some of the applicants noted that they have proposed additional safeguards to address the concerns of the relevant governments are unsure as to whether a settlement can be reached. These applicants asked that the ICANN Board allow their applications to proceed even if an agreement among the relevant parties cannot be reached. Additionally, inquiries have been made as to whether applicants and the relevant governments will have the opportunity to comment on conversations among the GAC, ICANN Board, and ICANN staff. There have been requests that that the GAC, NGPC, and ICANN staff consult with applicants before decisions regarding any additional safeguards are made.

Other applicants noted the important role of governments in the multi-stakeholder model, but advised the NGPC that it should not allow governments to exercise veto power over ICANN policies adopted through the multi-stakeholder process.

#### **What significant materials did the Board review?**

As part of its deliberations, the NGPC reviewed the following materials and documents:

- GAC Durban Communiqué:  
[https://gacweb.icann.org/download/attachments/27132037/Final\\_GAC\\_Communique\\_Durban\\_20130717.pdf?version=1&modificationDate=1374215119858&api=v2](https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Communique_Durban_20130717.pdf?version=1&modificationDate=1374215119858&api=v2) [PDF, 103 KB]
- Applicant responses to GAC advice:  
<http://newgtlds.icann.org/en/applicants/gac-advice/durban47>
- Applicant Guidebook, Module 3:  
<http://newgtlds.icann.org/en/applicants/agb/objection-procedures-04jun12-en.pdf> [PDF, 261 KB]
- Summary of Applicant Responses to GAC Advice in the Durban Communiqué (see reference materials).

#### **What factors did the Board find to be significant?**

In adopting its response to the GAC's advice in the Durban Communiqué, the NGPC

considered the applicant comments submitted, the GAC's advice transmitted in the Durban Communiqué, and the procedures established in the AGB.

**Are there positive or negative community impacts?**

The adoption of the GAC advice as provided in the attached scorecard will assist with resolving the GAC advice in manner that permits the greatest number of new gTLD applications to continue to move forward as soon as possible.

**Are there fiscal impacts or ramifications on ICANN (strategic plan, operating plan, budget); the community; and/or the public?**

There are no foreseen fiscal impacts associated with the adoption of this resolution.

**Are there any security, stability or resiliency issues relating to the DNS?**

Approval of the proposed resolution will not impact security, stability or resiliency issues relating to the DNS.

**Is this either a defined policy process within ICANN's Supporting Organizations or ICANN's Organizational Administrative Function decision requiring public comment or not requiring public comment?**

ICANN posted the GAC advice and officially notified applicants of the advice on 1 August 2013. This triggered the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1.

d. **GAC Communiqué Beijing – Scorecard**

The Committee engaged in a discussion on the open items of GAC advice in the Beijing Communiqué, including the Category 1 and Category 2 safeguard advice, and the protections for IGOs.

Chris Disspain provided the Committee with an update on the current proposal to address protections for IGOs, which would leverage the functionality of the current Trademark Clearinghouse claims function and the rapid take-down process of the URS. Chris noted that there might be a session among the NGPC and IGOs at the end of September to discuss a proposed approach to providing the protections.

With respect to the Category 2 safeguard advice, Christine Willet provided the Committee with an update of responses received from the applicants of strings identified in the GAC's advice regarding exclusive access for a generic string. Akram Atallah noted that the applicant responses received to date indicate that only a handful of the applicants intended to provide exclusive registry access.

The Committee agreed to discuss the path forward for the Category 2 safeguard advice at its next meeting.

e. GAC Communiqué Beijing – Category 1

Chris Disspain provided the Committee an update on the proposed approach to respond to the GAC's advice in the Beijing Communiqué regarding the Category 1 safeguards, and the Committee engaged in a discussion regarding a path forward. The discussion included consideration of how the safeguards could be implemented as contractual provisions, and distinguishing the list of Category 1 strings between those strings associated regulated industries, and all other listed strings.

Chris recommended a strategy for continued progress on the Category 1 safeguard advice, which included preparing a paper describing the proposed framework to address the advice, and socializing the paper among a small number of GAC members before it is communicated to the GAC.

Jonne Soininen recommended that GAC members from non-English speaking nations be included in the discussions. Olga Madruga-Forti concurred with the recommendation.

Heather Dryden commented that the full GAC membership should be able to participate in the process, as appropriate, before the Committee finalizes the proposal.

Jonne inquired whether there are national variations that could cause concern from the GAC about what is considered regulated industry and what is not. Olga noted the importance of beginning to consider the consequences if there is non-compliance with a contractual obligation related to the Category 1 safeguards.

The Committee acknowledged the difficulty in scheduling an intersessional meeting with the GAC on this matter given the timing of the Buenos Aires meeting, and discussed how to move forward in advance of the Buenos Aires meeting.

f. ALAC Statement on the Preferential Treatment for Community Applications in String Contention

George Sadowsky provided the Committee with an overview of the concern expressed by the ALAC in its Statement on the Preferential Treatment for Community Applications in String Contention, noting that ALAC requested the Committee to provide preferential treatment to applications that meet the characteristics of community applications even if not submitted as a community application.

George indicated that he had discussions with the drafter of the ALAC Statement to better understand the concerns underlying the ALAC's letter.

The Committee discussed the concerns with implementing the ALAC's recommendation. Chris Disspain highlighted the need to be consistent with the position the Committee communicated to the GAC on this issue.

George noted that it may be difficult to accept the recommendation in the ALAC Statement, and Ray Plzak agreed.

George agreed to work with staff to prepare a response to the ALAC, and noted that the response should include consideration of the additional questions sent by the ALAC after it submitted the statement at hand.

g. ALAC Statement on Community Expertise in Community Priority Evaluation

George Sadowsky presented the concerns expressed in the ALAC Statement on Community Expertise in Community Priority Evaluation, noting that the ALAC questions the ability of the chosen community priority evaluator to evaluate with respect to a mind-set that is more community-focused as opposed to business-focused.

The Committee considered whether it would be appropriate to accept the ALAC's advice for ALAC to supply evaluators from the community to the panel, and George recommended against adopting this approach. Ray Plzak agreed, and commented that the Committee should not set a precedent in terms of inviting other people into assist with the work of panels, outside of the established process the exists to form the panels.

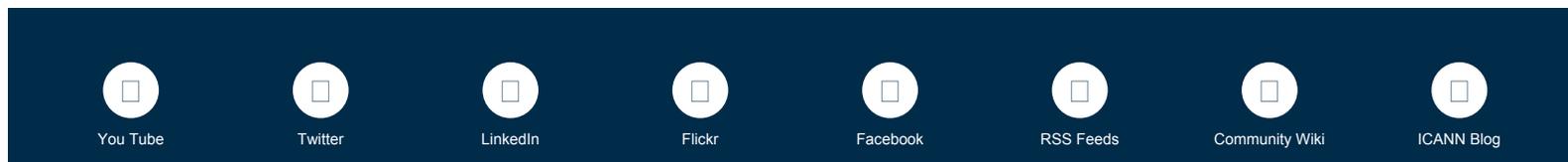
George proposed that the Committee direct staff to alert the panel of the concerns expressed in the ALAC statement. George also outlined a proposed response to the ALAC and agreed to work with staff on a formal response.

George commented that upon completion of the community priority evaluation process, it may be beneficial to do an informal audit to look for any egregious violations of understanding about the community priority evaluation.

h. AOB

The Committee did not discuss any other business, and the Chair called then called the meeting to a close.

Published on 30 September 2013



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RESPONDENT'S EXHIBIT



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## Minutes | Regular Meeting of the New gTLD Program Committee

This page is available in: English | العربية | Español | Français | Русский | 中文

28 Sep 2013

**Note:** On 10 April 2012, the Board established the New gTLD Program Committee, comprised of all voting members of the Board that are not conflicted with respect to the New gTLD Program. The Committee was granted all of the powers of the Board (subject to the limitations set forth by law, the Articles of incorporation, Bylaws or ICANN's Conflicts of Interest Policy) to exercise Board-level authority for any and all issues that may arise relating to the New gTLD Program. The full scope of the Committee's authority is set forth in its charter at <http://www.icann.org/en/groups/board/new-gTLD>.

**A Regular Meeting of the New gTLD Program Committee of the ICANN Board of Directors was held in Los Angeles, California on 28 September 2013 at 16:40 local time.**

**Committee Chairman Cherine Chalaby promptly called the meeting to order.**

**In addition to the Chair the following Directors participated in all or part of the meeting: Fadi Chehadé (President and CEO, ICANN), Chris Disspain, Bill Graham, Olga Madruga-Forti, Erika Mann, Gonzalo Navarro, Ray Plzak, George Sadowsky, Mike Silber, and Kuo-Wei Wu.**

**Jonne Soininen (IETF Liaison) and Francisco da Silva (TLG Liaison) were in attendance as non-voting liaisons to the Committee. Heather Dryden was in attendance as an observer to the Committee.**

**ICANN Staff in attendance for all or part of the meeting: Akram Atallah (President, Generic Domains Division); John Jeffrey (General Counsel and Secretary); Francisco Arias; Megan Bishop; Michelle Bright; Samantha Eisner; Allen Grogan; Dan Halloran; Jamie Hedlund; Elizabeth Le; Karen Lentz; Cyrus Namazi; David Olive; Karine Perset; Erika Randall; Amy Stathos; and Christine Willett.**

**These are the minutes of the Meeting of the New gTLD Program Committee, which took place on 28 September 2013.**

1. **Consent Agenda**
  - a. [Approval of NGPC Meeting Minutes](#)

2. **Main Agenda**

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- a. [Remaining Items from Beijing and Durban GAC Advice Rationale for Resolution 2013.09.28.NG02](#)
- b. [Name Collision Discussion](#)
- c. [Update on String Similarity](#)

## 1. Consent Agenda:

### a. Approval of NGPC Meeting Minutes

The Chair provided an overview of the meeting agenda, and introduced the items on the Consent Agenda.

George Sadowsky moved and Mike Silber seconded the resolution on the Consent Agenda. The Committee took the following action:

Resolved (2013.09.28.NG01), the NGPC approves the minutes of the

13 August 2013 and 10 September 2013 New gTLD Program Committee Meetings.

**All members of the Committee present voted in favor of Resolution 2013.09.28.NG01. The Resolution carried.**

## 2. Main Agenda:

### a. Remaining Items from Beijing and Durban GAC Advice

The Committee discussed each of the items on the proposed iteration of the scorecard to address the remaining open items of the GAC's advice in the Beijing and Durban Communiqués.

The President and CEO provided the Committee with an overview of the new correspondence from the GAC regarding .WINE and .VIN, and explained that the GAC advised the ICANN Board that the GAC finalized its consideration of the .WINE and .VIN, and further advised that the applications should proceed through the normal evaluation process. The President and CEO recommended that ICANN show leadership on the issue and possibly take a role to create a space for a dialogue between the affected parties.

The President and CEO also recommended that a timeline should be placed on the matter so that the parties can move forward one way or another. Chris Disspain made note of the letter received from the European Union on the applications, and suggested that the appropriate timeline would be the ICANN meeting in Buenos Aires.

Olga Madruga-Forti asked for clarification about whether inviting the affected parties for a dialogue would constitute adding an additional step to the process established in the Applicant Guidebook, and wanted to understand the ramifications of doing so.

Chris Disspain expressed concern about requiring the affected parties talk further or reach agreement, since there are opposing views among governments. Mike Silber noted concern that governments generally only negotiate with other governments, not with third parties in the private sector.

Mike also expressed concern that given the sensitivities of the issue and concerns about consumer confidence, the presumption should not automatically be that the applicant is awarded a TLD.

Heather Dryden informed the Committee of the hard work and deliberations of the GAC to try to reach consensus on the issue. Heather noted that the GAC's communication is meant to provide an explanation as to why there is a range of views on safeguards for .WINE and .VIN. Heather encouraged the Committee to find a way to respond to the GAC's advice that acknowledges and reinforces the processes and procedures that have been followed in the GAC to issue the advice.

Erika Mann provided historical background on the issue of geographical indicators in international trade and intellectual property environments, and noted the difficulty in reaching consensus on the issue. Erika noted that there may be difficulty in extending protections for geographical indicators in the domain name environment. Erika Mann suggested that the Committee be provided with additional analysis on this subject enhance its understanding of the issue. Bill Graham and Gonzalo Navarro agreed.

Bill Graham cautioned that the Committee should be mindful of how it involves itself in the issue, given the range of views expressed and the inability to reach consensus. Olga also advised that the Committee should be mindful of taking an action that might detract from having the GAC strive for consensus.

Gonzalo Navarro expressed concern about whether it was appropriate to expand the application of certain protections of governments for geographic identifiers into this forum. The President and CEO agreed that it was important to acknowledge that ICANN cannot make regulations and laws that other bodies are entrusted to do.

The Committee also discussed a proposed path forward for considering its position on the GAC consensus objection advice concerning .AMAZON given the information presented in the applicant's response.

Amy Stathos inquired whether any member of the Committee had conflicts related to any applications identified in the GAC advice that the Committee was responding to in the proposed scorecard. No conflicts were noted.

Ray Plzak moved and Olga Madruga-Forti seconded the resolution.

The Committee then took the following action:

Whereas, the GAC met during the ICANN 46 meeting in Beijing and issued a Communiqué on 11 April 2013 ("Beijing Communiqué").

Whereas, the GAC met during the ICANN 47 meeting in Durban and issued a Communiqué on 18 July 2013 ("Durban Communiqué").

Whereas, the NGPC adopted a scorecard to respond to the GAC's advice in the Beijing Communiqué and the Durban Communiqué, which were adopted on 4 June 2013 and 10 September 2013, respectively.

Whereas, the NGPC has developed another iteration of the scorecard to respond to certain remaining items of GAC advice in the Beijing Communiqué and the Durban Communiqué.

Whereas, the NGPC is undertaking this action pursuant to the authority granted to it by the Board on 10 April 2012, to exercise the ICANN Board's authority for any and all issues that may arise relating to the New gTLD Program.

Resolved (2013.09.28.NG02), the NGPC adopts the "Remaining Items from Beijing and Durban GAC Advice: Updates and Actions" (28 September 2013), attached as [Annex 1](#) [PDF, 96 KB] to this Resolution, in response to remaining items of GAC advice in the Beijing Communiqué and the Durban Communiqué as presented in the scorecard.

**All members of the Committee present voted in favor of Resolution 2013.09.28.NG02. The Resolution carried.**

## Rationale for Resolution 2013.09.28.NG02

Article XI, Section 2.1 of the ICANN Bylaws

<<http://www.icann.org/en/about/governance/bylaws#XI>> permit the GAC to "put issues to the Board directly, either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision to existing policies." The GAC issued advice to the Board on the New gTLD Program through its Beijing Communiqué dated 11 April 2013 and its Durban Communiqué dated 18 July 2013. The ICANN Bylaws require the Board to take into account the GAC's advice on public policy matters in the formulation and adoption of the policies. If the Board decides to take an action that is not consistent with the GAC advice, it must inform the GAC and state the reasons why it decided not to follow the advice. The Board and the GAC will then try in good faith to find a mutually acceptable solution. If no solution can be found, the Board will state in its final decision why the GAC advice was not followed.

The NGPC has previously addressed items of the GAC's Beijing and Durban advice, but there are some items that the NGPC continues to work through. The NGPC is being asked to consider accepting remaining Beijing and Durban GAC advice items as described in the attached scorecard dated 28 September 2013.

As part of its consideration of the GAC advice, on 18 April 2013, ICANN posted the Beijing GAC advice and officially notified applicants of the advice, <<http://newgtlds.icann.org/en/announcements-and-media/announcement-18apr13-en>> triggering the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1. Additionally, on 1 August 2013, ICANN posted the Durban GAC advice and officially notified applicants of the advice <<http://newgtlds.icann.org/en/announcements-and-media/announcement-01aug13-en>>, triggering the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1. The complete set of applicant responses are provided at: <<http://newgtlds.icann.org/en/applicants/gac-advice/>>.

In addition, on 23 April 2013, ICANN initiated a public comment forum to solicit input on how the NGPC should address Beijing GAC advice regarding safeguards applicable to broad categories of new gTLD strings <<http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm>>. The NGPC has considered the applicant responses in addition to the community feedback on how ICANN could implement the GAC's safeguard advice in the Beijing Communiqué in formulating its response to the remaining items of GAC advice.

As part of the applicant response period, several of the applicants indicated that they have entered into dialogue with the affected parties, and they anticipated reaching agreement on the areas of concern. Some of the applicants noted that they have proposed additional safeguards to address the concerns of the relevant governments are unsure as to whether a settlement can be reached. These applicants asked that the ICANN Board allow their applications to proceed even if an agreement among the relevant parties cannot be reached. Additionally, inquiries have been made as to whether applicants and the relevant governments will have the opportunity to comment on conversations among the GAC, ICANN Board, and ICANN staff. There have been requests that that the GAC, NGPC, and ICANN staff consult with applicants before decisions regarding any additional safeguards are made.

Other applicants noted the important role of governments in the multi-stakeholder model, but advised the NGPC that it should not allow governments to exercise veto power over ICANN policies adopted through the multi-stakeholder process.

Additionally, some members of the community opposed the NGPC accepting the GAC's advice concerning safeguards. Opposing commenters generally expressed concern that this is new and unanticipated policy, contrary to the bottom-up process. They also indicated that the safeguards are vague and not adequately defined, and are therefore not possible to implement.

As part of its deliberations, the NGPC reviewed the following materials and documents:

GAC Beijing Communiqué:

[https://gacweb.icann.org/download/attachments/27132037/Final\\_GAC\\_Communique\\_Durban\\_20130718.pdf?version=1&modificationDate=1375787122000&api=v2](https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Communique_Durban_20130718.pdf?version=1&modificationDate=1375787122000&api=v2) [PDF, 238 KB]

- GAC Durban Communiqué:

[https://gacweb.icann.org/download/attachments/27132037/Final\\_GAC\\_Communique\\_Durban\\_20130717.pdf?version=1&modificationDate=1374215119858&api=v2](https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Communique_Durban_20130717.pdf?version=1&modificationDate=1374215119858&api=v2) [PDF, 104 KB]

- Letter from H. Dryden to S. Crocker dated 11 September 2013 re: .vin and .wine:

[https://gacweb.icann.org/download/attachments/27132037/Letter from GAC Chair to ICANN Board\\_20130909.pdf?version=1&modificationDate=1379026679000&api=v2](https://gacweb.icann.org/download/attachments/27132037/Letter from GAC Chair to ICANN Board_20130909.pdf?version=1&modificationDate=1379026679000&api=v2) [PDF, 63 KB]

- Applicant responses to GAC advice: <http://newgtlds.icann.org/en/applicants/gac-advice/>

- Applicant Guidebook, Module 3: <http://newgtlds.icann.org/en/applicants/agb/objection-procedures-04jun12-en.pdf> [PDF, 265 KB]

In adopting its response to remaining items of Beijing and Durban GAC advice, the NGPC considered the applicant comments submitted, the GAC's advice transmitted in the Communiqués, and the procedures established in the AGB. The adoption of the GAC advice as provided in the attached scorecard will assist with resolving the GAC advice in a manner that permits the greatest number of new gTLD applications to continue to move forward as soon as possible.

There are no foreseen fiscal impacts associated with the adoption of this resolution, but fiscal impacts of the possible solutions discussed will be further analyzed if adopted. Approval of the resolution will not impact security, stability or resiliency issues relating to the DNS.

As part of ICANN's organizational administrative function, ICANN posted the Durban GAC advice and officially notified applicants of the advice on 1 August 2013. Likewise, ICANN posted the Beijing GAC advice and officially notified applicants of the advice on 18 April 2013. In each case, this triggered the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1.

## b. Name Collision Discussion

The Chair introduced the agenda item, and the President, Generic Domains Division gave the Committee an overview of the public comments received on the study regarding the use of TLDs that are not currently delegated at the root level of the public DNS, and the companion proposal to manage the risks identified in the study. The President, Generic Domains Division noted that the proposed path forward ensures that ICANN takes deliberate steps to move forward in a way that mitigates risk.

The President, Generic Domains Division reported on the mitigation steps that certificate authorities have taken to revoke certain internal name certificates after ICANN enters into a

registry agreement with a new gTLD applicant.

The President, Generic Domains Division presented a proposed framework for additional study in response to the public comments to examine the severity of the collision occurrences, and a potential path forward to delegation while the additional study is being completed.

Additionally, the President, Generic Domains Division provided the Committee with metrics from preliminary studies on some causes of name collisions, noting that some common browser configurations and operating systems may be causing some of the name collision issues shown in the data set. Ray Plzak noted that this is similar to past behavior of certain applications that were causing similar impacts to the root servers.

The President, Generic Domains Division informed the Committee that the proposed framework to manage the collision occurrences would require registry operators to provide a point of contact to enable an affected party to report second level domains that are causing severe harm as a consequence of name collision occurrences, and would establish a targeted public outreach campaign.

Jonne Soininen noted support for the proposed approach and recommended the Committee to move forward with the proposal. George Sadowsky asked whether the Committee should first review any report that the SSAC may publish on the issue. The President, Generic Domains Division noted that the proposed approach was a conservative path forward, and that the proposed study would be adjusted, as needed, to take into account input from any forthcoming SSAC report. The President and CEO asked about potential reaction in the community to this approach.

Ray Plzak recommended that a letter be sent to the SSAC to inform the SSAC of the proposed plan, and George agreed. The President and CEO informed the Committee that staff had been communicating with members of the SSAC as the proposed framework was being developed. The President and CEO committed to providing the SSAC with a communication on the proposed name collision management plan. Heather Dryden also reminded the Committee of its agreement to send a written briefing to the GAC on the name collision matter prior to delegation of new gTLDs.

Olga Madruga-Forti recommended that the framework to address collision occurrences needs to focus on the fairness of the method by which an applicant's applied-for string is placed in a particular risk category.

The Committee agreed to consider this topic further at its next meeting.

#### c. Update on String Similarity

The Committee continued its discussions on some of the recent expert determinations made by the dispute resolution service provider on string confusion objections.

Mike Silber inquired about outreach to the dispute resolution service provider, and Amy Stathos provided an update, noting that the dispute resolution service provider was reviewing the determinations to analyze whether there are true inconsistencies that need to be addressed. Amy noted that the dispute resolution service provider indicated its willingness to work with the Committee to the extent the Committee provides direction to the dispute resolution service provider.

Amy and Mike also provided a summary of the process for reviewing visual similarity and the string similarity objection process, and explained the differences between the two, and the standards of review for each process.

Chris Disspain noted that generally, most of the string similarity objections determinations have been well argued and reasoned, but he had concerns about certain decisions.

Mike Silber expressed concern that although the string similarity objection determinations may be satisfying from a legal perspective, the determinations may not be satisfying from the perspective of the global public interest in whether there is benefit to having singular and plural versions of a string. Mike stressed the importance of looking at the global public interest, and not simply the impact on the objectors.

Ray Plzak made note that almost all of the recent submissions of Reconsideration Requests were from parties aggrieved by the string similarity objection determinations, and questioned whether there was something the Committee could provide to the dispute resolution panels that might help reduce the flow of the Reconsideration Requests. Mike noted that all of the objections were either completed or waiting final decision, and suggested that there is no longer an opportunity for intervention.

The Chair asked the Committee about what it should do as a next step. The President, Generic Domains Division noted the importance of timing, given that the contracting process is ongoing and it would be more difficult to change courses later.

The Committee requested that staff continue to provide updates on the string similarity objection determinations so that the Committee could continue to monitor the concerns expressed by the community.

The Chair called the meeting to a close.

Published on 18 November 2013



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**RESPONDENT'S EXHIBIT**



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## Minutes | Regular Meeting of the New gTLD Program Committee

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09 Jan 2014

**Note:** On 10 April 2012, the Board established the New gTLD Program Committee, comprised of all voting members of the Board that are not conflicted with respect to the New gTLD Program. The Committee was granted all of the powers of the Board (subject to the limitations set forth by law, the Articles of Incorporation, Bylaws or ICANN's Conflicts of Interest Policy) to exercise Board-level authority for any and all issues that may arise relating to the New gTLD Program. The full scope of the Committee's authority is set forth in its charter at <http://www.icann.org/en/groups/board/new-gTLD>.

A Regular Meeting of the New gTLD Program Committee of the ICANN Board of Directors was held telephonically on 9 January 2014 at 20:00 UTC.

Committee Chairman Cherine Chalaby promptly called the meeting to order.

In addition to the Chair the following Directors participated in all or part of the meeting: Fadi Chehadé (President and CEO, ICANN), Chris Disspain, Bill Graham, Bruno Lanvin, Olga Madruga-Forti, Gonzalo Navarro, Ray Plzak, and George Sadowsky.

Erika Mann, Mike Silber, and Kuo-Wei Wu sent apologies.

Jonne Soininen (IETF Liaison) and was in attendance as a non-voting liaison to the Committee. Heather Dryden was in attendance as an observer to the Committee.

Secretary: John Jeffrey (General Counsel and Secretary).

ICANN Executives and Staff in attendance for all or part of the meeting: Akram Atallah (President, Global Domains Division); Megan Bishop (Board Support Coordinator); Michelle Bright (Board Support Manager); Allen Grogan (Chief Contracting Counsel); Jamie Hedlund (Advisor to the President/CEO); Olof Nordling (Senior Director, GAC Relations); Karine Perset (Senior Director of Board Support); Erika Randall (Counsel); Amy Stathos (Deputy General Counsel); Christine Willett (Vice President, gTLD Operations); and Mary Wong (Senior Policy Director).

These are the Minutes of the Meeting of the New gTLD Program Committee, which took place on 9 January 2014.

1. [Consent Agenda](#)

2. [Main Agenda](#)

- a. [GAC Advice Update](#)
- b. [Reconsideration Request 13-12, Tencent Holdings Limited  
Rationale for Resolution 2014.01.09.NG02](#)
- c. [Reconsideration Request 13-13, Christopher Barron/GOProud](#)
- d. [AOB](#)
  - i. [Extension of Initial Protections of IGO Identifiers  
Rationale for Resolution 2014.01.09.NG03 – 2014.01.09.NG04](#)

## 1. Consent Agenda

The Chair provided an overview of the items for discussion on the agenda, and introduced the items on the consent agenda.

George Sadowsky moved and Bill Graham seconded the Resolution on the Consent Agenda. The Committee then took the following action:

Resolved (2014.01.09.NG01), the NGPC approves the minutes of the 16 November and 20 November 2013 New gTLD Program Committee Meetings.

**All members of the Committee present voted in favor of Resolution 2014.01.09.NG01. Bruno Lanvin, Erika Mann, Mike Silber, and Kuo-Wei Wu were unavailable to vote on the Resolution. The Resolution carried.**

## 2. Main Agenda

### a. [GAC Advice Update](#)

Chris Disspain provided the Committee with an update of the open items of [GAC](#) advice needing further action by the Committee, including new items of advice in the Buenos Aires Communiqué and the [GAC's](#) advice on .SPA, and the Category 1 and Category 2 Safeguards. Chris noted that the Committee would need to consider how to respond to the Category 1 Safeguards for .ARMY, .NAVY, and .AIRFORCE. He also updated the Committee on the ongoing work to address the implementation issues with the [GAC's](#) advice on [IGO](#) protections.

Several members of the Committee asked about the timing for preparing the written briefings requested in the Buenos Aires Communiqué. Jamie Hedlund indicated that drafts of the written briefings would be available for discussion during the February meeting in Los Angeles.

Bill Graham inquired about the materials that were planned to be provided to the community in mid-December concerning special launch programs referenced in the Buenos Aires Communiqué. Heather Dryden provided additional context for the [GAC's](#) request in the Buenos Aires Communiqué concerning special launch programs and the need to provide clarity to the community on this issue.

Akram Atallah reported that [ICANN](#) published the approved launch program application review guidelines in mid-December, and discussed the information in a recent Webinar. Heather

suggested that staff report on the actions taken to address the GAC's advice on special launch programs at the next meeting to make sure the GAC's concerns are adequately addressed.

George Sadowsky inquired about the timeline for consideration of the open items of GAC advice, and Olga Madruga-Forti suggested that an update be provided to the GAC as soon as possible to show how the Committee is working to address the advice. Jamie indicated that many open items would be ripe for resolution during the Committee's meeting in February.

Gonzalo Navarro asked that an update on the progress to address the GAC's advice on .AMAZON (and related IDNs) be provided during the February meeting. Olga agreed that an update was needed so that the Committee could continue to move forward with addressing the GAC's advice.

The Chair asked for an estimate of the number of items of advice that may remain open after the February meeting, and Chris noted that the Committee should be able to resolve many open items of advice so that only a handful remain. The Committee directed staff to prepare an updated iteration of the GAC advice scorecard and drafts of the written briefings for consideration at its February meeting.

#### b. Reconsideration Request 13-12, Tencent Holdings Limited

The Chair presented the Committee with a summary of the background information concerning Reconsideration Request 13-12, and noted that the Committee previously discussed the Reconsideration Request during its 20 November 2013 meeting. The Chair stated that the briefing materials were revised at the Committee's request.

The Chair reminded the Committee that the Board Governance Committee recommended that the Reconsideration Request be denied, and the Committee engaged in a discussion of the BGC's recommendation.

Amy Stathos updated the Committee on New gTLD-related Reconsideration Requests in the queue for consideration by the BGC, and the BGC's plan for resolving the requests. She informed the Committee that the BGC recognized that for Reconsideration Requests that are based on staff action or inaction, the Bylaws grant the BGC the authority to make a final determination on those requests. She noted that the BGC's default position would be that the BGC makes a final determination on these requests without further consideration by the Committee.

Ray Plzak summarized the concerns discussed in the BGC meeting on handling Reconsideration Requests, noting that many recent requests fail to state proper grounds for reconsideration. As appropriate, the BGC intends to direct requestors to the other appeal mechanisms that may be more appropriate to address their grievance.

The General Counsel and Secretary noted that the BGC also discussed developing materials for the community to provide additional clarity on the Reconsideration Request process. Olga Madruga-Forti commented that the BGC is balancing the growing queue of requests, which may include requests that do not state proper grounds for reconsideration, while giving attention to those requests where there is an issue that is ripe for reconsideration.

George Sadowsky moved and Olga Madruga-Forti seconded the proposed Resolution. Olga

suggested minor text edits to the rationale. The Committee then took the following action:

Whereas, Tencent Holdings Limited's ("Tencent") Reconsideration Request 13-12, sought reconsideration of the Expert Determinations on the objection of Sina Corporation ("Sina") to Tencent's applications for .微博 and .WEIBO.

Whereas, Request 13-12 challenges the staff's acceptance of the 30 August 2013 Expert Determinations in favor of Sina's objection to Tencent's applications for .微博 and .WEIBO.

Whereas, the Board of Governance Committee ("BGC") considered the issues raised in Request 13-12.

Whereas, the BGC recommended that Request 13-12 be denied because Tencent has not stated proper grounds for reconsideration and the New gTLD Program Committee ("NGPC") agrees.

Whereas, in addition to all of the materials submitted with the Request, the NGPC reviewed and considered the materials that were submitted by Tencent and Sina after the BGC issued its Recommendation on Request 13-12 and concluded that said material does not change the Recommendation of the BGC.

Resolved (2014.01.09.NG02), the NGPC adopts the BGC Recommendation on Reconsideration Request 13-12, which can be found at <http://www.icann.org/en/groups/board/governance/reconsideration/recommendation-tencent-29oct13-en.pdf> [PDF, 128 KB].

**All members of the Committee present voted in favor of Resolution 2014.01.09.NG02. Bruno Lanvin, Erika Mann, Mike Silber, and Kuo-Wei Wu were unavailable to vote on the Resolution. The Resolution carried.**

## Rationale for Resolution 2014.01.09.NG02

### I. Brief Summary

Both the Requester Tencent and Sina applied for the same two strings .微博 (the Chinese characters for "microblogging") and .WEIBO. Sina won its Legal Rights Objection ("LRO") against Sina's applications for these two strings. The Requester claims: (i) that the LRO Panel applied a higher standard of review than what is set forth in the Applicant Guidebook, which Tencent suggests created an elevated standard of review; (ii) that ICANN's acceptance of the DRSP's decision is contrary to ICANN's mandate to act transparently and fairly; and (iii) that ICANN failed to provide guidance to the DRSP panels regarding the burden of proof. As a result, the Requester asks the Board (or here the NGPC) to reconsider ICANN's acceptance of the Expert Determinations in favor of Sina. In the alternative, Requester asks ICANN to "provide applicants of inconsistent and

erroneous DRSP panel determinations, such as Tencent, with an avenue for redress that is consistent with ICANN's mandate to act with fairness." (*Id.*)

The BGC concluded that: (i) there is no indication that the Expert Panel applied the wrong LRO standard; (ii) nothing supports the claim that ICANN acted in contradiction of its mandate to act transparently and fairly; and (iii) there is no identified policy or process requiring any further guidance to the DRSP panels on the burden of proof. In sum, there is no evidence to support the conclusion that ICANN's actions violated any established policy or process. Therefore, the BGC has Recommended that Request 13-13 be denied. The NGPC agrees.

## II. Facts

### A. Background Facts

Request 13-12 involves ICANN's acceptance of an Expert Determination on two strings -- 微博 and .WEIBO. Both Sina and Tencent applied for the same two strings. Sina filed a legal rights objection (LRO) to Tencent's applications claiming that Tencent's applications violated Sina's legal rights. An expert panel deemed Sina the prevailing party, meaning that Sina "won" its objections, and Tencent "lost". Specifically, the Panel reviewed Sina's standing to object to Tencent's Applications and determined that Sina had a basis to object as the rights holder in the 微博 mark. Applying the standards for an LRO as defined in Section 3.5.2 of the Applicant Guidebook, the Panel concluded that Tencent's Applications unjustifiably impair the distinctive character of the Sina's 微博 mark.

Tencent then filed Request 13-12, asking for reconsideration of the objection proceedings. Tencent is seeking reconsideration of staff's acceptance of the LRO Panel's determination, which ICANN has previously stated can be considered a staff action for the purposes of the Reconsideration process.

### B. Requester's Claims

Tencent primarily based its Request on the argument that the LRO Panel should have applied (but did not apply) the general standard for LRO objections set forth in Section 3.5.2 of the Applicant Guidebook, which Tencent suggests created some sort of elevated standard for reviewing trademark-based objections.

## III. Issues

The Request calls into consideration: (1) whether the Expert Panel failed to follow ICANN guidelines suggested in the Applicant Guidebook ("Guidebook") for determining an LRO (2) whether ICANN's acceptance of the LRO Panel's Determinations is contrary to ICANN's mandate to act transparently and fairly; and (3) whether ICANN's alleged failure to provide guidance to the Panel regarding burden of proof supports reconsideration.

## IV. The Relevant Standards for Evaluating Reconsideration Requests

ICANN's Bylaws call for the BGC to evaluate and make recommendations to the Board with respect to Reconsideration Requests. See Article IV, Section 2 of the Bylaws. The NGPC, bestowed with the powers of the Board in this instance, has reviewed and thoroughly considered the BGC Recommendation on Request 13-12 and finds the analysis sound.<sup>1</sup> As noted in the BGC's Recommendation, the Reconsideration process should not ask the BGC, or the NGPC, to substantively review the LRO Panel's determination, but only to determine if any policy or process violation occurred in the consideration of the Objection.

#### V. Analysis and Rationale

The BGC found that none of the Requester's claims support reconsideration.

First, the BGC concluded that the Requester failed to provide any evidence demonstrating that the Expert Panel failed to comply with the Guidebook. The BGC agreed with the Requester that Section 3.5.2 of the Guidebook sets out the following general standard for LRO objections:

[A] DRSP panel of experts presiding over a legal rights objection will determine whether the potential use of the applied-for gTLD by the applicant takes unfair advantage of the distinctive character or the reputation of the objector's registered or unregistered trademark or service mark ("mark") or IGO name or acronym ... or unjustifiably impairs the distinctive character or the reputation of the objector's mark or IGO name or acronym, or otherwise creates an impermissible likelihood of confusion between the applied-for gTLD and the objector's mark or IGO name or acronym.

The BGC noted, however, that the Requester failed to recognize the remainder of the LRO standards set forth in the Guidebook that the Panel did evaluate. The Guidebook lists eight non-exclusive factors that an LRO panel should consider when determining whether an objector has satisfied the general Section 3.5.2 standard (i.e., whether an applied for gTLD "takes unfair advantage of," "unjustifiably impairs" or "creates an impermissible likelihood of confusion between" another's trademark).

The BGC noted that the Panel *did* apply the eight non-exclusive factors to Sina's LRO and determined that the factors supported Sina's Objection. (Determination, Pages 5-8.) Therefore, the BGC determined that "Tencent has not established that the Panel 'failed to follow ICANN guidelines' for assessing LROs." As a result, no process violation was stated, and the BGC recommended that the Reconsideration be denied.

Second, the BGC concluded that the Requester provides no evidence to support its claim that ICANN's acceptance of the LRO Panel determination is contrary to ICANN policy or process. The BGC noted that the requirement that ICANN accepts expert determinations as advice to ICANN was developed out of years of

community discussion. If ICANN were to ignore the Expert Determination – particularly where there is no violation of policy or process – ICANN would be endorsing a violation of the Guidebook.

Third, the BGC determined that the Requester failed to provide any factual support for its claim that ICANN "failed to explicitly define the Objector's burden of proof for the Expert panels, e.g., Preponderance of the Evidence, Clear and Convincing Evidence, etc." The Requester suggests this resulted in different panelists using different standards for the Objector's burden of proof. The BGC noted that the Requester also failed to identify the burden of proof used in its objection proceeding or what it claims the proper burden of proof should have been. Further, the Requester did not suggest that the processes set out for hearing LROs was not followed. In short, the Requester does not identify any established policy or process that required ICANN to take such action beyond what ICANN actually did – make clear in the Guidebook that the "objector bears the burden of proof in each case."

#### VI. Decision

The NGPC had the opportunity to consider all of the materials submitted by or on behalf of the Requester that relate to Request 13-12, as well as materials submitted by or on behalf of the applicant. The NGPC also notes that on 26 December 2013 the Requester submitted a letter with attachments to the NGPC after the BGC issued its Recommendation. (See Attachment H to Reference Materials.) Sina also submitted a letter to the NGPC in response to Requester's 26 December 2013 letter. (See Attachment I to Reference Materials.) The letters and attachments have since been reviewed and the NGPC has determined that these materials do not alter the BGC's Recommendation or the rationale contained in that Recommendation.

Following consideration of all relevant information provided, the NGPC reviewed and has adopted the BGC's Recommendation on Request 13-12, the full text of which can be found at <http://www.icann.org/en/groups/board/governance/reconsideration/recommendation-tencent-29oct13-en.pdf> [PDF, 128 KB] and is attached to the Reference Materials to the NGPC Submission on this matter. The BGC's Recommendation on Reconsideration Request 13-12 shall also be deemed a part of this Rationale.

In terms of timing of the BGC's Recommendation, we note that Section 2.16 of Article IV of the Bylaws provides that the BGC shall make a final determination or recommendation with respect to a Reconsideration Request within thirty days following receipt of the request, unless practical. See Article IV, Section 2.16 of the Bylaws. To satisfy the thirty-day deadline, the BGC would have to have acted by 14 October 2013. Due to the volume of Reconsideration Requests received within recent weeks, the first practical opportunity for the BGC to take action on this Request was on 29 October 2013; it was impractical for the BGC to consider the Request sooner. Upon making that determination, staff notified the requestor of the BGC's anticipated timing for the review of Request 13-12. Further, due to the volume of Reconsideration Requests and other pending issues before the NGPC, as well as scheduling conflicts due to the ICANN public meeting in

Buenos Aires in November 2013 and the holiday schedule, the first practical opportunity for the NGPC to consider this Request was on 9 January 2014.

Adopting the BGC's recommendation has no financial impact on ICANN and will not negatively impact the systemic security, stability and resiliency of the domain name system.

This decision is an Organizational Administrative Function that does not require public comment.

#### c. Reconsideration Request 13-13, Christopher Barron/GOProud

The Chair presented the Committee with an overview of background information concerning Reconsideration Request 13-13, noting that the Board Governance Committee (BGC) recommended that the Reconsideration Request be denied because the requester failed to state the proper grounds for reconsideration. The Chair reminded the Committee that it made a decision on 13 July 2013 related to the underlying issues at play in the Reconsideration Request. At that time, the Committee approved a resolution directing staff to ask that the ICC revisit its decision not to register GoProud's objection against the string .GAY (applied for by dotgay LLC) in light of the report issued by the Ombudsman.

The Committee engaged in a discussion of the specific underlying claims alleged by the requester and considered the timeline of events giving rise to the complaint. George Sadowsky expressed concern about whether the requester was treated fairly, and whether a process misunderstanding may have prevented the merits of the community objection from being considered.

Olga Madruga-Forti asked whether there was a way to have this case decided on the merits, and noted her support of some of the comments made by the Ombudsman on this matter. George agreed, citing an overall concern about the fairness of the matters at issue in the Reconsideration Request.

Olga also emphasized the importance of understanding the ICC's rationale for its decision. Chris Disspain agreed, and inquired about the ICC's next steps if the Committee decided to accept the Reconsideration Request.

The General Counsel and Secretary commented that the ICC has expertise on matters of systems and process as well as substance, which was a consideration when deciding to retain the ICC to hear objections. The Chair suggested that the Committee be mindful of the scope of the type of actions or inactions that are subject to the Reconsideration Request process as it deliberates on the request.

To assist the Committee in its deliberations, the General Counsel and Secretary suggested that staff could prepare additional briefing materials for consideration at a subsequent meeting, including any additional information that may be available from the ICC about the rationale for its decision not to register GoProud's objection. Gonzalo Navarro recommended that staff be clear about what additional information it requested from the ICC so that the ICC could understand the issues being discussed by the Committee.

The Committee agreed to consider the matter further at a subsequent meeting.

d. AOB

The General Counsel and Secretary provided the Committee with an update on the progress made to establish a long-term meeting schedule to provide predictability for meeting dates. The Chair noted some of the challenges of developing a regular meeting schedule due to the frequency of Committee meetings and the time zone considerations, and suggested that the Committee explore a rotating meeting schedule. The Committee agreed that it would continue to discuss this matter at its February meeting.

The Chair informed the Committee that another meeting would be scheduled before the February workshop so that the Committee could consider the report on String Confusion Objection Expert Determinations, and potentially Reconsideration Request 13-13.

Chris Disspain informed the Committee that the temporary protections afforded to IGOs while the Committee continued to work through the GAC's advice on the issue were set to expire. Bill Graham asked how the expiration of the Supplement to the Registry Agreement (scheduled to expire on 15 January 2014) would impact the Committee's ability to impose protections for IGOs once a permanent solution was developed. Allen Grogan noted that it was not necessary to use the Supplement to the Registry Agreement to impose changes to address IGO protections. The Committee agreed that it was prudent to extend the temporary protections while it continues to actively work on the implementation issues of the GAC's advice.

Chris Disspain moved and Gonzalo Navarro seconded the resolution to extend initial protections for IGO identifiers. The Committee then took the following action:

i. Extension of Initial Protections of IGO Identifiers

Whereas, the GAC advised the ICANN Board in the Buenos Aires Communiqué that it remained committed to continuing the dialogue with the NGPC on finalizing the modalities for permanent protection of IGO acronyms at the second level, and advised that initial protections for IGO acronyms should remain in place until the dialogue between the NGPC, the IGOs are completed.

Whereas, the New gTLD Program Committee (NGPC) is responsible for considering the IGO GAC Advice pursuant to the authority granted to it by the Board on 10 April 2012, to exercise the ICANN Board's authority for any and all issues that may arise relating to the New gTLD Program.

Whereas, on 17 July 2013, the NGPC approved Resolutions 2013.07.17.NG01-2013.07.17.NG03 requiring registry operators to continue to implement temporary protections for the precise IGO names and acronyms on the "IGO List" posted as [Annex 1 \[PDF, 544 KB\]](#) to Resolution 2013.07.02NG03 – 2013.07.02.NG06 until the first meeting of the NGPC following the ICANN 48 Meeting in Buenos Aires or until the NGPC makes a further determination on the GAC Advice regarding IGO protections, whichever is earlier.

Whereas, the GAC, NGPC, ICANN staff and community continue to actively work through outstanding implementation issues, the NGPC thinks it is prudent to further

extend the initial protections for the IGO identifiers.

Resolved (2014.01.09.NG03), the NGPC confirms that appropriate preventative initial protection for the IGO identifiers will continue to be provided as presented in the New gTLD Registry Agreement adopted on 2 July 2013 while the GAC, NGPC, ICANN staff and community continue to actively work through outstanding implementation issues.

Resolved (2014.01.09.NG04), the NGPC determines that pursuant to Specification 5 in the New gTLD Registry Agreement adopted on 2 July 2013, registry operators will continue to implement temporary protections for the precise IGO names and acronyms on the "IGOList" posted as Annex 1 [PDF, 544 KB] to Resolution 2013.07.02NG03 – 2013.07.02.NG06 until the NGPC makes a further determination on the GAC advice regarding protections for IGO identifiers.

**All members of the Committee present voted in favor of Resolution 2014.01.09.NG03 – 2014.01.09.NG04. Olga Madruga-Forti, Erika Mann, Ray Plzak, Mike Silber, and Kuo-Wei Wu were unavailable to vote on the Resolution. The Resolution carried.**

#### Rationale for Resolution 2014.01.09.NG03 – 2014.01.09.NG04

Article XI, Section 2.1 of the ICANN Bylaws

<http://www.icann.org/en/about/governance/bylaws#XI> permits the GAC to "put issues to the Board directly, either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision to existing policies." The GAC issued advice to the Board on the New gTLD Program through its Buenos Aires Communiqué dated 20 November 2013. The ICANN Bylaws require the Board to take into account the GAC's advice on public policy matters in the formulation and adoption of the policies. If the Board decides to take an action that is not consistent with the GAC advice, it must inform the GAC and state the reasons why it decided not to follow the advice. The Board and the GAC will then try in good faith to find a mutually acceptable solution. If no solution can be found, the Board will state in its final decision why the GAC advice was not followed.

In the Buenos Aires Communiqué, the GAC issued additional advice regarding protections for IGO identifiers. The NGPC is being asked to consider extending the initial temporary protections afforded to IGOs in July 2013 as the parties continue to work through implementing the GAC advice.

On 2 July 2013, the NGPC directed that temporary protections for the IGO names and acronyms previously identified by the GAC on its "IGO List dated 22/03/2013," which was attached as Annex 1 [PDF, 544 KB] the NGPC's 2 July 2013 resolutions, so that the GAC and the NGPC would have time to work out outstanding implementation issues. These initial protections were extended again on 17 July 2013 until the first meeting of the NGPC following the ICANN Meeting in Buenos Aires, Argentina, unless the NGPC and the GAC were able to resolve the issues and the NGPC passed a resolution on the GAC advice earlier than the ICANN Meeting in Buenos Aires. The NGPC agrees that it is important that those temporary protections remain in place as it continues to consider the GAC's advice on protections for IGOs as presented in the Buenos Aires Communiqué.

The Resolution under consideration would extend the temporary protections for IGO identifiers as provided in the New gTLD Registry Agreement. As part of its consideration of this resolution, the NGPC takes note that on 29 April 2013, ICANN initiated a public comment forum to solicit input on the proposed final draft of the New gTLD Registry Agreement <<http://www.icann.org/en/news/public-comment/base-agreement-29apr13-en.htm>>. The public comment forum closed on 11 June 2013. ICANN received several responses from the community during the course of the public comment forum on the proposed final draft of the New gTLD Registry Agreement; however, none of the responses specifically relates to the provisions in the New gTLD Registry Agreement to provide protections for IGO identifiers. <<http://forum.icann.org/lists/comments-base-agreement-29apr13/>>.

Additionally, the NGPC takes note that the GNSO Policy Development Process Working Group tasked with addressing the issue of protecting the identifiers of certain IGOs and International Non-Governmental Organizations ("INGOs") delivered its [Final Report](#) [PDF, 645 KB] to the GNSO Council on 10 November 2013. The Working Group's consensus recommendations in the Final Report were adopted unanimously by the GNSO Council on 20 November 2013. As required by the ICANN Bylaws, public notice of the policies under consideration as well as an opportunity to comment on their adoption, prior to their consideration by the ICANN Board has been initiated. The public comment period is scheduled to close on 8 January 2014 <<http://www.icann.org/en/news/public-comment/igo-ingo-recommendations-27nov13-en.htm>>.

As part of its deliberations on this issue, the NGPC reviewed the following significant materials and documents:

- [GAC Buenos Aires Communiqué](#):  
[https://gacweb.icann.org/download/attachments/27132037/FINAL\\_Buenos\\_Aires\\_GAC\\_Communique\\_20131120.pdf?version=1&modificationDate=1385055905332&api=v2](https://gacweb.icann.org/download/attachments/27132037/FINAL_Buenos_Aires_GAC_Communique_20131120.pdf?version=1&modificationDate=1385055905332&api=v2) [PDF, 97 KB]
- [GNSO PDP Working Group Final Report on Protection of IGO and INGO Identifiers in all gTLDs](#): <<http://gns0.icann.org/en/issues/igo-ingo-final-10nov13-en.pdf>> [PDF, 645 KB]

The NGPC's response to the GAC advice will assist with resolving the GAC advice in manner that permits the New gTLD Program to continue to move forward, while being mindful of the ongoing efforts to work through the outstanding implementation issues.

There are no foreseen fiscal impacts associated with the adoption of this resolution, and approval of the proposed resolution will not impact security, stability or resiliency issues relating to the DNS. This is not a defined policy process within ICANN's [Supporting Organizations](#) or ICANN's Organizational Administrative Function decision requiring public comment.

The Chair called the meeting to a close.

Published on 6 March 2014

<sup>1</sup> Having a reconsideration process whereby the BGC reviews and, if it chooses, makes a recommendation to the Board/NGPC for approval positively affects ICANN's transparency and accountability. It provides an avenue for the community to ensure that staff and the Board are acting in accordance with ICANN's policies, Bylaws, and Articles of Incorporation.

The footer navigation bar features a dark blue header with eight white circular icons for social media and feeds: YouTube, Twitter, LinkedIn, Flickr, Facebook, RSS Feeds, Community Wiki, and ICANN Blog. Below this is a light gray menu grid with five columns of links.

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RESPONDENT'S EXHIBIT



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## Minutes | Regular Meeting of the New gTLD Program Committee

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05 Feb 2014

**Note:** On 10 April 2012, the Board established the New gTLD Program Committee, comprised of all voting members of the Board that are not conflicted with respect to the New gTLD Program. The Committee was granted all of the powers of the Board (subject to the limitations set forth by law, the Articles of Incorporation, Bylaws or ICANN's Conflicts of Interest Policy) to exercise Board-level authority for any and all issues that may arise relating to the New gTLD Program. The full scope of the Committee's authority is set forth in its charter at <http://www.icann.org/en/groups/board/new-gTLD>.

A Regular Meeting of the New gTLD Program Committee of the ICANN Board of Directors was held in Los Angeles, CA on 5 February 2014 at 10:30 local time.

Committee Chairman Cherine Chalaby promptly called the meeting to order.

In addition to the Chair the following Directors participated in all or part of the meeting: Fadi Chehadé (President and CEO, ICANN), Chris Disspain, Bill Graham, Olga Madruga-Forti, Erika Mann, Gonzalo Navarro, Ray Plzak, George Sadowsky, Mike Silber, and Kuo-Wei Wu.

Bruno Lanvin sent apologies.

Jonne Soininen (IETF Liaison) was in attendance as a non-voting liaison to the Committee. Heather Dryden was in attendance as an observer to the Committee.

Secretary: John Jeffrey (General Counsel and Secretary).

ICANN Executives and Staff in attendance for all or part of the meeting: Akram Atallah (President, Global Domains Division); Susanna Bennett (Chief Operating Officer); Megan Bishop (Board Support Coordinator); Michelle Bright (Board Support Manager); Allen Grogan (Chief Contracting Counsel); Daniel Halloran (Deputy General Counsel); Jamie Hedlund (Advisor to the President/CEO); Elizabeth Le (Senior Counsel); Erika Randall (Counsel); Amy Stathos (Deputy General Counsel); Christine Willett (Vice President, gTLD Operations); and Mary Wong (Senior Policy Director).

These are the Minutes of the Meeting of the New gTLD Program Committee, which took place on 5 February 2014.

1. [Main Agenda](#)

- a. [Remaining Items from Beijing, Durban and Buenos Aires GAC Advice: Updates and Actions Rationale for Resolution 2014.02.05.NG01](#)
- b. [Discussion of Report on String Confusion Expert Determinations Rationale for Resolution 2014.02.05.NG02](#)
- c. [Staff Update on Reassignment of Registry Agreements](#)

## d. Staff Update on Name Collision Framework

## 1. Main Agenda

## a. Remaining Items from Beijing, Durban and Buenos Aires GAC Advice: Updates and Actions

The Committee reviewed the proposed scorecard to respond to the GAC advice concerning the New gTLD Program delivered in the GAC's Buenos Aires Communiqué. The scorecard also included certain remaining open items of GAC advice from the Beijing Communiqué and the Durban Communiqué.

Chris Disspain presented each item in the Scorecard to the Committee, and the Committee discussed the actions it proposed to take to address the GAC advice. The Committee's consideration of the scorecard included a discussion of the approach to resolve the GAC's advice on .WINE and .VIN. Ray Plzak suggested that the Committee have a discussion at a later date on how to handle letters the Committee receives from individual governments on various matters. The Committee also discussed the scope and timing of the analysis commissioned to aid the Committee's decision-making process as it considers the GAC's advice on .WINE and .VIN.

Chris noted that a plan to address the GAC's advice on protections for IGOs was under development and would be presented for discussion at a future meeting. He also walked the Committee through the proposed response to the GAC's Category 1 Safeguard advice, and the GAC's advice on .ISLAM and .HALAL. The Committee considered potential next steps to address the GAC's advice on .ISLAM and .HALAL, and decided to send a letter to the applicant providing an update.

Olga Madruga-Forti commented on the update provided about the GAC's Category 2 Safeguard advice, and asked whether all of the applicants who expressed their intent provide a exclusive registry access had provided an explanation for how the exclusive access registry serves a public interest goal. Akram Atallah noted that the applicant responses were published, and suggested that the Committee discuss next steps for the approach it wants to take to address the responses.

The Committee also discussed the scope and timing of the analysis commissioned to aid the Committee's decision-making process as it considers the GAC's advice on .AMAZON (and related IDNs), and staff noted that the analysis would be available by the Singapore meeting.

Mike Silber noted that the Committee proposed to address some of the GAC advice by adding public interest commitments (PICs) to the New gTLD Registry Agreement. Mike asked for clarification about how the public interest commitments are binding and, if so, how are they made binding. He questioned whether the mechanism to enforce PICs inappropriately relieves ICANN from responsibility to ensure registry operators comply with the commitments. In response, Akram provided an explanation of the public interest commitment dispute resolution process (PICDRP) contemplated in the New gTLD Registry Agreement.

After additional discussion of the Scorecard, Olga Madruga-Forti moved and George Sadowsky seconded the resolution.

The Committee then took the following action:

Whereas, the GAC met during the ICANN 46 meeting in Beijing and issued a

Communiqué on 11 April 2013 ("Beijing Communiqué").

Whereas, the GAC met during the ICANN 47 meeting in Durban and issued a Communiqué on 18 July 2013 ("Durban Communiqué").

Whereas, the GAC met during the ICANN 48 meeting in Buenos Aires and issued a Communiqué on 20 November 2013 ("Buenos Aires Communiqué").

Whereas, the NGPC adopted scorecards to respond to certain items of the GAC's advice in the Beijing Communiqué and the Durban Communiqué, which were adopted on 4 June 2013, 10 September 2013, and 28 September 2013.

Whereas, the NGPC has developed another iteration of the scorecard to respond to certain remaining items of GAC advice in the Beijing Communiqué and the Durban Communiqué, and new advice in the Buenos Aires Communiqué.

Whereas, the NGPC is undertaking this action pursuant to the authority granted to it by the Board on 10 April 2012, to exercise the ICANN Board's authority for any and all issues that may arise relating to the New gTLD Program.

Resolved (2014.02.05.NG01), the NGPC adopts the "GAC Advice (Beijing, Durban, Buenos Aires): Actions and Updates" (5 February 2014), attached as [Annex 1](#) [PDF, 371 KB] to this Resolution, in response to open items of Beijing, Durban and Buenos Aires GAC advice as presented in the scorecard.

**All members of the Committee present voted in favor of Resolution 2014.02.05.NG01. Bruno Lanvin was unavailable to vote on the Resolution. The Resolution carried.**

### Rationale for Resolution 2014.02.05.NG01

Article XI, Section 2.1 of the ICANN Bylaws

<http://www.icann.org/en/about/governance/bylaws#XI> permit the GAC to "put issues to the Board directly, either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision to existing policies." The GAC issued advice to the Board on the New gTLD Program through its Beijing Communiqué dated 11 April 2013, its Durban Communiqué dated 18 July 2013, and its Buenos Aires Communiqué dated 20 November 2013. The ICANN Bylaws require the Board to take into account the GAC's advice on public policy matters in the formulation and adoption of the policies. If the Board decides to take an action that is not consistent with the GAC advice, it must inform the GAC and state the reasons why it decided not to follow the advice. The Board and the GAC will then try in good faith to find a mutually acceptable solution. If no solution can be found, the Board will state in its final decision why the GAC advice was not followed.

The NGPC has previously addressed items of the GAC's Beijing and Durban advice, but there are some items that the NGPC continues to work through. Additionally, the GAC issued new advice in its Buenos Aires Communiqué that relates to the New gTLD Program. The NGPC is being asked to consider accepting some of the remaining open items of the Beijing and Durban GAC advice, and new items of Buenos Aires advice as described in the attached scorecard dated 28 January 2014.

As part of its consideration of the GAC advice, ICANN posted the GAC advice and officially notified applicants of the advice, triggering the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1. The Beijing GAC advice was posted on 18 April 2013 <http://newgtlds.icann.org/en/announcements-and-media/announcement-18apr13-en>, the Durban GAC advice was posted on 1 August 2013

<<http://newgtlds.icann.org/en/announcements-and-media/announcement-01aug13-en>>, and the Buenos Aires GAC advice was posted on 11 December 2013. The complete set of applicant responses are provided at: <http://newgtlds.icann.org/en/applicants/gac-advice/>.

In addition, on 23 April 2013, ICANN initiated a public comment forum to solicit input on how the NGPC should address Beijing GAC advice regarding safeguards applicable to broad categories of new gTLD strings <<http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm>>. The NGPC has considered the applicant responses in addition to the community feedback on how ICANN could implement the GAC's safeguard advice in the Beijing Communiqué in formulating its response to the remaining items of GAC advice.

As part of the applicant responses, several of the applicants who were subject to GAC Category 1 Safeguard Advice have indicated that they support the NGPC's proposed implementation plan, dated 29 October 2013, and voiced their willingness to comply with the safeguards proposed in the plan. On the other hand, an applicant noted that the NGPC's plan to respond to the GAC's Category 1 Safeguard advice is a "step back from what the GAC has asked for" with regard to certain strings. Others contended that their applied-for string should not be listed among the Category 1 Safeguard strings. Some of the applicants for the .doctor string noted that the NGPC should not accept the new GAC advice on .doctor because the term "doctor" is not used exclusively in connection with medical services and to re-categorize the string as relating to a highly regulated sector is unfair and unjust.

With respect to the Category 2 Safeguards, some applicants urged ICANN to ensure that any Public Interest Commitments or application changes based on safeguards for applications in contention sets are "bindingly implemented and monitored after being approved as a Change Request." Additionally, some applicants indicated their support for the GAC advice protections for inter-governmental organization acronyms, protection of Red Cross/Red Crescent names, and special launch programs for geographic and community TLDs.

As part of its deliberations, the NGPC reviewed the following materials and documents:

- GAC Beijing Communiqué:  
[https://gacweb.icann.org/download/attachments/27132037/Final\\_GAC\\_Communique\\_Durban\\_20130718.pdf?version=1&modificationDate=1375787122000&api=v2](https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Communique_Durban_20130718.pdf?version=1&modificationDate=1375787122000&api=v2) [PDF, 238 KB]
- GAC Durban Communiqué:  
[https://gacweb.icann.org/download/attachments/27132037/Final\\_GAC\\_Communique\\_Durban\\_20130717.pdf?version=1&modificationDate=1374215119858&api=v2](https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Communique_Durban_20130717.pdf?version=1&modificationDate=1374215119858&api=v2) [PDF, 103 KB]
- GAC Buenos Aires Communiqué:  
[https://gacweb.icann.org/download/attachments/27132037/FINAL\\_Buenos\\_Aires\\_GAC\\_Communique\\_20131120.pdf?version=1&modificationDate=1385055905332&api=v2](https://gacweb.icann.org/download/attachments/27132037/FINAL_Buenos_Aires_GAC_Communique_20131120.pdf?version=1&modificationDate=1385055905332&api=v2) [PDF, 97 KB]
- Letter from H. Dryden to S. Crocker dated 11 September 2013 re: .vin and .wine:  
[https://gacweb.icann.org/download/attachments/27132037/Letter%20from%20GAC%20Chair%20to%20ICANN%20Board\\_20130909.pdf?version=1&modificationDate=1379026679000&api=v2](https://gacweb.icann.org/download/attachments/27132037/Letter%20from%20GAC%20Chair%20to%20ICANN%20Board_20130909.pdf?version=1&modificationDate=1379026679000&api=v2) [PDF, 63 KB]
- Applicant responses to GAC advice:  
<http://newgtlds.icann.org/en/applicants/gac-advice/>
- Applicant Guidebook, Module 3:  
<http://newgtlds.icann.org/en/applicants/agb/objection-procedures-04jun12-en.pdf>  
[PDF, 261 KB]

In adopting its response to remaining items of Beijing and Durban GAC advice, and the new Buenos Aires advice, the NGPC considered the applicant comments submitted, the GAC's advice transmitted in the Communiqués, and the procedures established in the AGB and the ICANN Bylaws. The adoption of the GAC advice as provided in the attached scorecard will assist with resolving the GAC advice in manner that permits the greatest number of new gTLD applications to continue to move forward as soon as possible.

There are no foreseen fiscal impacts associated with the adoption of this resolution. Approval of the resolution will not impact security, stability or resiliency issues relating to the DNS.

As part of ICANN's organizational administrative function, ICANN posted the Buenos Aires GAC advice and officially notified applicants of the advice on 11 December 2013. The Durban Communiqué and the Beijing Communiqué were posted on 18 April 2013 and 1 August 2013, respectively. In each case, this triggered the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1.

#### b. Discussion of Report on String Confusion Expert Determinations

The Committee continued its consideration of potential framework principles of a review mechanism to address perceived inconsistent Expert Determinations from the String Confusion Objections. Applicability of the proposed review mechanism is limited to cases where two or more objections have been raised by the same objector against different applications for the same string where the Expert Determinations resulted in different outcomes. The Chair highlighted some of the key elements of the framework principles, and provided the Committee with a summary of its previous discussion on the matter. Amy Stathos reminded the Committee that the framework principles would be posted for public comment if the Committee decided to move forward with the proposed approach to address perceived inconsistent Expert Determinations from the String Confusion Objections.

Olga Madruga-Forti asked whether existing processes are available to address the perceived inconsistent Expert Determinations from the String Confusion Objections without creating a review mechanism, and the Committee considered the merits of whether there is a need for the proposed review mechanism.

After further discussion, the Committee determined that the proposed review mechanism should be posted for public comment. Mike Silber suggested that the resolution be clear that the review will be limited to the String Confusion Objection Expert Determinations for .CAR/.CARS and .CAM/.COM. Also, the Committee agreed to discuss at a subsequent meeting certain other String Confusion Expert Determinations (i.e. objections raised by the same applicant against different strings, with differing results), and requested staff to provide materials for discussion.

George Sadowsky moved and Mike Silber seconded the resolution. The Committee then took the following action:

Whereas, on 10 October 2013 the Board Governance Committee (BGC) requested staff to draft a report for the NGPC on String Confusion Objections "setting out options for dealing with the situation raised within this Request, namely the differing outcomes of the String Confusion Objection Dispute Resolution process in similar disputes involving Amazon's Applied – for String and TLDH's Applied-for String."

Whereas, the NGPC is considering potential paths forward to address the perceived inconsistent Expert Determinations from the New gTLD Program String Confusion

Objections process, including implementing a review mechanism. The review will be limited to the String Confusion Objection Expert Determinations for .CAR/.CARS and .CAM/.COM.

Whereas, the proposed review mechanism, if implemented, would constitute a change to the current String Confusion Objection process in the New gTLD Applicant Guidebook.

Whereas, the NGPC is undertaking this action pursuant to the authority granted to it by the Board on 10 April 2012, to exercise the ICANN Board's authority for any and all issues that may arise relating to the New gTLD Program.

Resolved (2014.02.05.NG02), the NGPC directs the President and CEO, or his designee, to publish for public comment the proposed review mechanism for addressing perceived inconsistent Expert Determinations from the New gTLD Program String Confusion Objections process.

**All members of the Committee present voted in favor of Resolution 2014.02.05.NG02. Bruno Lanvin was unavailable to vote on the Resolution. The Resolution carried.**

#### Rationale for Resolution 2014.02.05.NG02

The NGPC's action today, addressing how to deal with perceived inconsistent Expert Determinations from the New gTLD Program String Confusion Objections process, is part of the NGPC's role to provide general oversight of the New gTLD Program. One core of that work is "resolving issues relating to the approval of applications and the delegation of gTLDs pursuant to the New gTLD Program for the current round of the Program." (See NGPC Charter, Section II.D).

The action being approved today is to first direct the ICANN President and CEO, or his designee, to initiate a public comment period on the framework principles of a potential review mechanism to address the perceived inconsistent String Confusion Objection Expert Determinations.

The effect of this proposal, and the issue that is likely to be before the NGPC after the close of the public comments, is to consider implementing a new review mechanism in the String Confusion Objection cases where objections were raised by the same objector against different applications for the same string, where the outcomes of the String Confusion Objections differ. If the proposal is eventually adopted after public comment and further consideration by the NGPC, ICANN would work with the International Centre for Dispute Resolution (ICDR) to implement the new review mechanism outlined in the proposal.

There are no foreseen fiscal impacts associated with the adoption of this resolution, which would initiate the opening of public comments, but the fiscal impacts of the proposed new review mechanism will be further analyzed if adopted. Approval of the resolution will not impact security, stability or resiliency issues relating to the DNS. The posting of the proposal for public comment is an Organizational Administrative Action not requiring public comment, however follow on consideration of the proposal requires public comment.

#### c. Staff Update on Reassignment of Registry Agreements

Item not considered.

d. Staff Update on Name Collision Framework

Item not considered.

The Chair called the meeting to a close.

Published on 6 March 2014



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**R-30**

**RESPONDENT'S EXHIBIT**



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## Minutes | Regular Meeting of the New gTLD Program Committee

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22 Mar 2014

**Note:** On 10 April 2012, the Board established the New gTLD Program Committee, comprised of all voting members of the Board that are not conflicted with respect to the New gTLD Program. The Committee was granted all of the powers of the Board (subject to the limitations set forth by law, the Articles of Incorporation, Bylaws or ICANN's Conflicts of Interest Policy) to exercise Board-level authority for any and all issues that may arise relating to the New gTLD Program. The full scope of the Committee's authority is set forth in its charter at <http://www.icann.org/en/groups/board/new-gTLD>.

A Regular Meeting of the New gTLD Program Committee of the ICANN Board of Directors was held in Singapore on 22 March 2014 at 13:15 local time.

Committee Chairman Cherine Chalaby promptly called the meeting to order.

In addition to the Chair the following Directors participated in all or part of the meeting: Fadi Chehadé (President and CEO, ICANN), Steve Crocker (Board Chairman), Chris Disspain, Bill Graham, Bruno Lanvin, Erika Mann, Ray Pizak, George Sadowsky, Mike Silber, and Kuo-Wei Wu.

Jonne Soininen (IETF Liaison) was in attendance as a non-voting liaison to the Committee.

Olga Madruga-Forti, Gonzalo Navarro and Heather Dryden sent apologies.

Secretary: John Jeffrey (General Counsel and Secretary).

ICANN Executives and Staff in attendance for all or part of the meeting: Akram Atallah (President, Global Domains Division); Susanna Bennett (Chief Operating Officer); Megan Bishop (Board Support Coordinator); Michelle Bright (Board Support Manager); Allen Grogan (Chief Contracting Counsel); Jamie Hedlund (Advisor to the President/CEO); David Olive (Vice President, Policy Development); Cyrus Namazi (Vice President, DNS Industry Engagement); Trang Nguyen (Director, GDD Operations); Erika Randall (Counsel); Ashwin Rangan (Chief Innovation and Information Officer); and Amy Stathos (Deputy General Counsel).

These are the Minutes of the Meeting of the New gTLD Program Committee, which took place on 22 March 2014.

1. [Main Agenda](#)

- a. [Outstanding GAC Advice](#)  
[Rationale for Resolution 2014.03.22.NG01](#)
- b. [Approval of Disbursements to New gTLD Auction Service Provider](#)  
[Rationale for Resolution 2014.03.22.NG02](#)
- c. [Approval of Registry Agreement Specification 13 for Brand Category of Applicants](#)

- d. [Reconsideration Request 13-13, Christopher Barron/GOProud Rationale for Resolution 2014.03.22.NG03](#)
- e. [Reconsideration Request 14-7, Asia Green IT System Ltd. Rationale for Resolution 2014.03.22.NG04](#)
- f. [Update on proposed review mechanism for perceived inconsistent string confusion objection determinations](#)

## 1. Main Agenda

### a. Outstanding GAC Advice

Chris Disspain walked the Committee through the open items of advice issued by the GAC in Beijing, Durban and Buenos Aires, and the Committee considered its next steps with respect to the open items.

As part of its discussion on the open items of GAC advice, the Committee decided to publish the expert analysis commissioned concerning the GAC's consensus advice on .AMAZON and related IDNs, and to request the applicant and the concerned governments to submit comments to the analysis for the Committee's consideration. The President and CEO suggested that the Committee consider whether it was appropriate for ICANN to facilitate a dialogue between the applicant and the concerned governments.

The Committee's discussion of the open items of GAC advice included an update on its previous action to address the GAC's advice on .HALAL and .ISLAM. Chris reported that the applicant filed a Reconsideration Request to challenge the Committee's action, which was denied because it failed to state proper grounds for reconsideration.

The Committee also considered the Category 2 Safeguard advice, the applications for .SPA, and recent correspondence requesting additional safeguards for .HEALTH and other health-related strings. The Committee agreed that these items should be discussed at its upcoming workshop in Pasadena and requested that staff provide a briefing to assist the Committee in its deliberations.

Chris provided the Committee with an update on the ongoing discussions to work through the GAC advice, GNSO policy recommendations and IGO requests concerning the protections for IGO acronyms. Jamie Hedlund made note of certain elements of the GAC advice and the GNSO consensus policy recommendations that may differ, and suggested that further consideration be given to how to proceed with addressing the GAC's advice in light of the policy recommendations. Bruno Lanvin commented that it was important to continue to communicate to all relevant parties about the progress being made to address these concerns.

Following up on a previous discussion, Ray Plzak made note of the correspondence the Committee receives from governments on New gTLD Program matters, and recommended that the Committee discuss the process for handling such correspondence. He also noted that this topic had broader applicability, and perhaps should be discussed in a different setting. Bill Graham suggested that the topic may be suitable for discussion during the Board-GAC sessions during the ICANN meetings, and other Committee members weighed in on his suggestion. The Committee determined that the general matter of responding to correspondence is suitable for discussion by the full Board.

The Committee also discussed the open item of GAC advice concerning .WINE and .VIN. Chris provided an overview of the advice, and the Committee's past consideration of the advice. Chris noted that the independent, third party analysis that staff commissioned on the

Committee's request to assist the Committee's understanding of the issues referenced in the GAC's advice on .WINE and .VIN was completed, and he highlighted the conclusions of the analysis.

The Committee discussed the conclusions presented in the analysis and discussed a proposed resolution in response to the GAC's advice on .WINE and .VIN. In response to a question from Mike Silber, the Committee discussed the next steps if the resolution is adopted. Erika Mann highlighted a point mentioned in the analysis about potential infringement at the second level, and Chris noted that the UDRP and the URS could address such issues.

Chris Disspain moved and Bill Graham seconded the proposed resolution. The Committee agreed that the independent analysis should be appended to the resolution. The Committee then took the following action.

Whereas, on 11 September 2013, the Governmental Advisory Committee (GAC) issued advice to the ICANN Board that it had finalized its consideration of the strings .WINE and .VIN.

Whereas, the GAC advised the ICANN Board that there was no GAC consensus advice on additional safeguards for .WINE and .VIN, and the applications for .WINE and .VIN should proceed through the normal evaluation process.

Whereas, in the Buenos Aires Communiqué, the GAC noted that the Board may wish to seek a clear understanding of the legally complex and politically sensitive background on its advice regarding .WINE and .VIN in order to consider the appropriate next steps of delegating the two strings.

Whereas, the NGPC commissioned a [analysis](#) [PDF, 771 KB] of the legally complex and politically sensitive background on the GAC's advice regarding .WINE and .VIN, which the NGPC considered as part of its deliberations on the GAC's advice.

Whereas, the Bylaws (Article XI, Section 2.1) require the ICANN Board to address advice put to the Board by the GAC.

Whereas, the NGPC is undertaking this action pursuant to the authority granted to it by the Board on 10 April 2012, to exercise the ICANN Board's authority for any and all issues that may arise relating to the New gTLD Program.

Resolved (2014.03.22.NG01), the NGPC accepts the GAC advice identified in the GAC Register of Advice as 2013-09-09-wine and vin, and directs the President and CEO, or his designee, that the applications for .WINE and .VIN should proceed through the normal evaluation process.

**All members of the Committee present voted in favor of Resolution 2014.03.22.NG01. Olga Madruga-Forti and Gonzalo Navarro were unavailable to vote on the Resolution. The Resolution carried.**

#### Rationale for Resolution 2014.03.22.NG01

The NGPC's action today, addressing the open item of GAC advice concerning .WINE and .VIN, is part of the ICANN Board's role to address advice put to the Board by the Governmental Advisory Committee (GAC). Article XI, Section 2.1 of the ICANN Bylaws <<http://www.icann.org/en/about/governance/bylaws#XI>> permit the GAC to "put issues to the Board directly, either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision to existing policies." The

GAC issued advice to the Board on the New gTLD Program through its Beijing Communiqué dated 11 April 2013, its Durban Communiqué dated 18 July 2013, and its Buenos Aires Communiqué dated 20 November 2013. The GAC also issued advice to the ICANN Board in a letter dated 9 September 2013 concerning .WINE and .VIN. The ICANN Bylaws require the Board to take into account the GAC's advice on public policy matters in the formulation and adoption of the polices. If the Board decides to take an action that is not consistent with the GAC advice, it must inform the GAC and state the reasons why it decided not to follow the advice. The Board and the GAC will then try in good faith to find a mutually acceptable solution. If no solution can be found, the Board will state in its final decision why the GAC advice was not followed.

The action being approved today is to accept the GAC's advice to the ICANN Board that there was no GAC consensus advice on additional safeguards for .WINE and .VIN, and the GAC "has finalized its consideration of the strings .wine and .vin and further advises that the application should proceed through the normal evaluation process." The effect of the NGPC's action concerning the GAC advice on .WINE and .VIN is that the strings will continue to proceed through the normal evaluation process and no additional safeguards will be required for the TLDs.

As part of its consideration of the GAC advice, ICANN posted the GAC advice and officially notified applicants of the advice, triggering the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1. The complete set of applicant responses are provided at: <<http://newgtlds.icann.org/en/applicants/gac-advice/>>. The NGPC has considered the applicant responses in formulating its response to the item of GAC advice being addressed today.

Additionally, on 28 September 2013, the NGPC noted that it stood ready to hear from GAC members as to the nature of the differences in views expressed in the advice while the NGPC analyzed the GAC's advice. Several governments provided letters to the NGPC expressing the nature of their views on whether the GAC's advice on the .WINE and .VIN TLDs should be imposed, with some individual governments expressing concerns that additional safeguards should be imposed before the strings are delegated, while others recommended that no additional safeguards should be imposed on the strings.

In response to the GAC's suggestion in the Buenos Aires Communiqué, the NGPC commissioned an analysis of the legally complex and politically sensitive background on this matter in the context of the GAC advice in order to consider the appropriate next steps of delegating .WINE and .VIN. The independent legal analysis concluded that "[a]s regards the applications for the assignment of the new gTLDs '.vin' and '.wine' filed by the Donuts company, there is no rule of the law of geographical indications, nor any general principle which obliges ICANN to reject the applications or accept the applications under certain specific conditions."

As part of its deliberations, the NGPC reviewed the following materials and documents:

- GAC Beijing Communiqué:  
[https://gacweb.icann.org/download/attachments/27132037/Final\\_GAC\\_Communique\\_Durban\\_20130718.pdf?version=1&modificationDate=1375787122000&api=v2](https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Communique_Durban_20130718.pdf?version=1&modificationDate=1375787122000&api=v2) [PDF, 238 KB]
- GAC Durban Communiqué:  
[https://gacweb.icann.org/download/attachments/27132037/Final\\_GAC\\_Communique\\_Durban\\_20130717.pdf?version=1&modificationDate=1374215119858&api=v2](https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Communique_Durban_20130717.pdf?version=1&modificationDate=1374215119858&api=v2) [PDF, 103 KB]
- GAC Buenos Aires Communiqué:  
[https://gacweb.icann.org/download/attachments/27132037/FINAL\\_Buenos\\_Aires\\_GAC\\_Communique\\_20131120.pdf?version=1&modificationDate=1385055905332&api=v2](https://gacweb.icann.org/download/attachments/27132037/FINAL_Buenos_Aires_GAC_Communique_20131120.pdf?version=1&modificationDate=1385055905332&api=v2) [PDF, 97 KB]

- Letter from H. Dryden to S. Crocker dated 11 September 2013 re: .vin and .wine:  
[https://gacweb.icann.org/download/attachments/27132037/Letter%20from%20GAC%20Chair%20to%20ICANN%20Board\\_20130909.pdf?version=1&modificationDate=1379026679000&api=v2](https://gacweb.icann.org/download/attachments/27132037/Letter%20from%20GAC%20Chair%20to%20ICANN%20Board_20130909.pdf?version=1&modificationDate=1379026679000&api=v2) [PDF, 63 KB]
- Applicant responses to GAC advice:  
<http://newgtlds.icann.org/en/applicants/gac-advice/>
- Applicant Guidebook, Module 3:  
<http://newgtlds.icann.org/en/applicants/agb/objection-procedures-04jun12-en.pdf>  
 [PDF, 260 KB]
- The Committee also considered correspondence received on this item of GAC advice including, but not limited to the following:
  - [Letter](#) from the European Federation of Origin Wines ("EFOW") dated 23 April 2013.
  - [Letter](#) from the Comité Interprofessionel du Vin de Champagne ("CIVC") dated 26 April 2013.
  - [Letter](#) from the International Trade Policy Wine Institute dated 20 June 2013.
  - [Letter](#) from the Organisation for an International Geographical Names Network ("oriGIn") dated 9 July 2013.
  - [Letter](#) from Napa Valley Vintners dated 8 August 2013.
  - [Letter](#) from EFOW and National Appellation of Origin Wines and Brandy Producers dated 19 August 2013.
  - [Letter](#) from Long Island Wine Council dated 29 August 2013.
  - [Letter](#) from the European Commission dated 12 September 2013.
  - [Letter](#) from the European Commission dated 7 November 2013.
  - [Letter](#) from the Inter-American Telecommunication Commission of the Organization of American States dated 15 November 2013.
  - [Letter](#) from EU Member States, Norway, and Switzerland dated 3 February 2014.
  - [Letter](#) from European Parliament dated 19 March 2014.

There are no foreseen fiscal impacts associated with the adoption of this resolution. Approval of the resolution will not impact security, stability or resiliency issues relating to the DNS. As part of ICANN's organizational administrative function, ICANN posted the Buenos Aires GAC advice and officially notified applicants of the advice on 11 December 2013. The Durban Communiqué and the Beijing Communiqué were posted on 18 April 2013 and 1 August 2013, respectively. In each case, this triggered the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1.

#### b. Approval of Disbursements to New gTLD Auction Service Provider

Akram Atallah presented the Committee with a request to disburse fees to the New gTLD Program auction provider, explaining that the auction provider will receive both a fixed fee and variable fees for its auction management services. Because of the variable component of the fees, Akram reported that it is possible that the amounts to be disbursed to the auction provider in any given month may exceed the contracting and disbursement limits of ICANN's current

Contracting and Disbursement Policy. As a result, Akram asked the Committee to approve the disbursement of funds to the auction provider. Akram explained that the auctions are planned to take place over ten months, beginning in June 2014, with twenty auctions to be scheduled for each month. He also provided a general outline for how the auctions would be conducted and when applicants would receive notice of a scheduled auction.

Steve Crocker requested that staff report back on the outcomes, expenses and productivity of the auctions so that the community is able to chart the progress of the auctions. George Sadowsky asked for clarification about the process used to select the auction provider.

Chris Disspain moved and Erika Mann seconded the proposed resolution. The Committee then took the following action:

Whereas, on 25 September 2010, the Board approved the New gTLD Application Processing budget (<http://www.icann.org/en/minutes/resolutions-25sep10-en.htm#1>).

Whereas, on 20 June 2011, the Board authorized the President and CEO to implement the New gTLD Program and approved the expenditures related to the New gTLD Program as detailed in section 7 of the Draft FY12 Operating Plan and Budget (<http://www.icann.org/en/minutes/resolutions-20jun11-en.htm>).

Whereas, the Board previously authorized the CEO or his designee to enter all contracts or statements of work with, and make all disbursements to, all gTLD Service Providers so long as the contract and disbursement amounts are contemplated in the approved budget for such expenditures (<http://www.icann.org/en/groups/board/documents/resolutions-2-14mar12-en.htm#1>).

Whereas, on 22 August 2013, the Board formally adopted the FY14 Operating Plan and Budget, which included the details of anticipated expenditures related to the New gTLD Program (<http://www.icann.org/en/about/financials/adopted-opplan-budget-fy14-22aug13-en.pdf> [PDF, 1 MB]).

Whereas, to date ICANN has entered into a Master Services Agreement with Power Auctions LLC (the "Auction Provider") to serve as the entity to provide ICANN facilitated auctions as a last resort for resolving String Contention Sets, as described in the [Applicant Guidebook \(AGB\)](#) section 4.3.

Whereas, the Auction Provider could provide in excess of \$500,000 worth of auction services in any given billing cycle and ICANN must be prepared to timely pay for those services.

Resolved (2014.03.22.NG02), the President and CEO or his designee is authorized to enter all contracts or statements of work with, and make all disbursements to, the Auction Provider so long as the contract and disbursement amounts are contemplated in the approved budget for such expenditures.

**All members of the Committee present voted in favor of Resolution 2014.03.22.NG02. Olga Madruga-Forti and Gonzalo Navarro were unavailable to vote on the Resolution. The Resolution carried.**

#### Rationale for Resolution 2014.03.22.NG02

The New gTLD auction process is an essential part of the New gTLD Program to resolve string contention sets. Contention sets are groups of applications containing identical or confusingly similar applied for gTLD strings. Contention sets must be resolved prior to

the execution of a Registry Agreement for an applied-for gTLD string. An ICANN facilitated auction is a last resort for resolving string contention sets, as described in the Applicant Guidebook. ICANN's Disbursement Policy limits ICANN officers from contracting for or disbursing more than US \$500,000.00 per obligation. Fees payable to the Auction Provider could exceed the contracting and disbursement limits of the Disbursement Policy during one or more billing cycles.

Accordingly, to ensure that payment obligations are satisfied with the Auction Provider in a timely manner, the NGPC has determined that it is appropriate to take this action now. The NGPC is therefore authorizing the President and CEO to enter into all required contracts and make all required disbursements, with the Auction Provider, subject to budgetary limits and based on the budget model that the Board approved on 22 August 2013, which included details of anticipated expenditures related to the New gTLD Program (<http://www.icann.org/en/about/financials/adopted-opplan-budget-fy14-22aug13-en.pdf> [PDF, 1 MB]).

Providing for this additional contracting and disbursement authority will have a positive impact on the community because it will allow ICANN to timely contract with and pay the Auction Provider that will be conducting the auctions of last resort. There are fiscal impacts on ICANN but all of those impacts have been anticipated in the approved FY 2014 and draft FY 2015 budgets. There will not be any security, stability or resiliency issues relating to the domain names system.

This is an Organizational Administrative Function that does not require public comment.

#### c. Approval of Registry Agreement Specification 13 for Brand Category of Applicants

Cyrus Namazi provided the Committee with an overview of Specification 13 to the New gTLD Registry Agreement, which if approved by the Committee, would provide certain limited accommodations to registry operators of TLDs that qualify as ".Brand TLDs." Cyrus explained to the Committee that the final version of Specification 13 being presented for approval did not include a particular clause originally included in the version posted for public comment; the clause would have allowed dot brand registry operators to designate exclusive registrars for the TLD. Cyrus noted that the clause was removed in response to a joint comment submitted by eleven registrars during the public comment period, but reported that recently, a number of objections had been raised by representatives of the dot brands about removing the clause. The Chair also provided some background on the discussions with registrars about the noted clause.

Steve Crocker inquired about the eligibility requirements to be considered a .BRAND TLD and Allen Grogan provided an explanation for how Specification 13 defines the term.

George Sadowsky inquired about the clause that was removed in response to comments, and asked for an explanation for the pros and cons of the proposed clause. Cyrus and Allen provided an overview of the concerns with including the clause, and highlighted that an open question was whether including the additional clause could be considered inconsistent with GNSO Policy Recommendation 19 on the Introduction of New Generic Top-Level Domains. Steve provided some historical insight on a similar issue with respect to .MUSEUM, and Jonne Soininen also provided some related historical context with respect to discussions on vertical integration.

Chris Disspain asked about the nature of the public comments received, and he also asked whether the group of registrars who issued the joint comment during the public comment period had an opportunity to discuss their concerns with the Brand Registry Group. Erika Mann

suggested that perhaps ICANN should facilitate discussions between the concerned parties, and George agreed. The President and CEO suggested that such discussions could begin in Singapore, since many representatives of the concerned parties were present.

Mike Silber asked whether it was possible to find some sort of middle ground where the .BRAND TLD applicants could move forward with a limited number of registrars, pending finalization or confirmation of the policy concerns raised.

Bill Graham suggested that the Committee should be prudent about moving forward with adopting a version of Specification 13 that the community had not yet reviewed. The General Counsel and Secretary also noted that it was important to consider any modification to Specification 13 in light of the GNSO consensus policy recommendations.

The Committee deliberated on the appropriate next steps given all of the factors at issue, which included possibly consulting with the GNSO on certain policy implications. The Committee agreed to schedule an additional meeting in Singapore to discuss the matter further.

#### d. Reconsideration Request 13-13, Christopher Barron/GOProud

Amy Stathos provided the Committee with an overview of Reconsideration Request 13-13, noting that the Committee previously decided to postpone further consideration of this agenda item to allow for analysis of additional facts at issue in the Reconsideration Request. Amy reported that the company that filed the objection against dotGAY LLC's application for .GAY was dissolved, and a new company was incorporated as a different legal entity (GOProud Inc. 2.0). Amy reported that representatives of GOProud Inc. 2.0 indicated that it did not want to be involved in the objection and would not pursue the objection further, even if the Committee asked the dispute resolution provider to accept the objection for consideration by an Expert Panel. Amy noted that the recommendation is that the reconsideration request be denied as moot because there is no party to prosecute the objection if the objection somehow was to be reinstated.

The Committee considered the new facts, and George Sadowsky moved and Mike Silber seconded the proposed resolution. The Committee then took the following action:

Whereas, on 13 March 2013, GOProud Inc. filed a community objection against dotGAY's LLC's application for .GAY.

Whereas, 12 April 2013, the International Centre for Expertise of the International Chamber of Commerce's ("ICC") dismissed GoProud Inc.'s community objection for failure to timely cure a deficiency in the objection.

Whereas, on 19 October 2013, Christopher Barron ("Barron") filed a Reconsideration Request ("Request 13-13") seeking reconsideration of the ICC's decision to dismiss GOProud, Inc.'s community objection to dotGAY LLC's application for .GAY.

Whereas, on 12 December 2013, the Board of Governance Committee ("BGC") considered the issues raised in Request 13-13 and recommended that Request 13-13 be denied because Barron has not stated proper grounds for reconsideration and the New gTLD Program Committee agrees.

Whereas, ICANN has since confirmed that the GOProud Inc. entity that filed the community objection against dotGAY LLC's application for .GAY has been dissolved and that the dissolved GOProud Inc. entity was reorganized and reincorporated as a different legal entity under the name GOProud Inc. 2.0.

Whereas, despite numerous attempts, ICANN has been unable to contact Barron regarding his affiliation with GOProud Inc. 2.0.

Whereas, ICANN has confirmed with GOProud Inc. 2.0 that Barron is not associated with the entity and that GOProud Inc. 2.0 has absolved itself from the community objection against dotGAY LLC's application for .GAY and Request 13-13.

Resolved (2014.03.22.NG03), the New gTLD Program Committee ("NGPC") concludes that Request 13-13 and any potential relief sought thereunder is moot because an entity does not exist to pursue the community objection brought by the dissolved GOProud Inc. against dotGAY LLC's application for .GAY, and on that basis the NGPC denies Request 13-13.

**All members of the Committee present voted in favor of Resolution 2014.03.22.NG03. Olga Madruga-Forti and Gonzalo Navarro were unavailable to vote on the Resolution. The Resolution carried.**

### Rationale for Resolution 2014.03.22.NG03

Requester Christopher Barron ("Barron") asked the Board (or here the NGPC) to reconsider the ICC's decision to dismiss GOProud, Inc.'s community objection to dotGAY LLC's application for the .GAY gTLD (the "Objection"). The ICC dismissed GOProud's Objection because GOProud failed to timely cure a deficiency in its Objection. The Requester contends that he did not receive notification that GOProud needed to cure a deficiency in its Objection until it was too late to cure because the ICC failed to notify at the proper address. The Requester also claims that the ICC failed to conduct its administrative review within 14 days required under the Applicant Guidebook and the New gTLD Dispute Resolution Procedure. (See Attachment A to Ref. Mat.)

The BGC concluded on 12 December 2013 that the Requestor has not stated proper grounds for reconsideration because there is no indication that the ICC violated any policy or process in deciding to dismiss GOProud's Objection. (See Attachment B to Ref. Mat.)

Since the BGC's Recommendation was issued, ICANN has confirmed the GOProud Inc. entity that filed the community objection to dotGAY LLC's ("dotGAY") application for .GAY has been dissolved. (See Attachment C to Ref. Mat.) ICANN further learned the dissolved GOProud Inc. entity was reorganized and reincorporated as a different legal entity under name GOProud Inc. 2.0. (See Attachment D to Ref. Mat.)

ICANN has confirmed with GOProud Inc. 2.0 that Barron is not associated with the entity. ICANN has also confirmed with GOProud Inc. 2.0 that the entity does not intend to proceed with the Objection or Reconsideration Request 13-13.

ICANN has made numerous attempts to contact via email and telephone Barron regarding Request 13-13 and his affiliation with GOProud Inc. 2.0. However, ICANN has been unable to reach Barron.

The NGPC had opportunity to consider all of the materials relevant to Request 13-13, including the materials submitted by or on behalf of the Requestor (see <http://www.icann.org/en/groups/board/governance/reconsideration>), the BGC's Recommendation on Request 13-13, and the materials included as Attachments C – D to the Reference Materials. The NGPC concludes that the Request 13-13 and any potential relief sought thereunder is moot because there does not exist an entity to pursue the community objection brought by the dissolved GOProud Inc. against dotGAY's application for .GAY and on that basis, the NGPC denies Request 13-13.

In terms of timing of the BGC's Recommendation, we note that Section 2.16 of Article IV of the Bylaws provides that the BGC shall make a final determination or recommendation with respect to a Reconsideration Request within thirty days following receipt of the request, unless practical. See Article IV, Section 2.16 of the Bylaws. To satisfy the thirty-day deadline, the BGC would have to have acted by 18 November 2013. Due to the volume of Reconsideration Requests received within recent weeks, the first practical opportunity for the BGC to take action on this Request was on 12 December 2013; it was impractical for the BGC to consider the Request sooner. Upon making that determination, staff notified the requestor of the BGC's anticipated timing for the review of Request 13-13. Further, due to the circumstances surrounding Request 13-13 that arose after the BGC issued its Recommendation and other pending issues before the NGPC, the first practical opportunity for the NGPC to consider this Request was on 22 March 2014.

This resolution does not have any financial impact on ICANN and will not negatively impact the systemic security, stability and resiliency of the domain name system.

This decision is an Organizational Administrative Function that does not require public comment.

#### e. Reconsideration Request 14-7, Asia Green IT System Ltd.

Amy Stathos presented the Committee with an overview of background information concerning Reconsideration Request 14-7, noting that the Board Governance Committee (BGC) recommended that the Reconsideration Request be denied because the requester failed to state the proper grounds for reconsideration. Amy noted that the applications for .ISLAM and .HALAL, which are the subject of Reconsideration Request 14-7, were also the subject of an early warning from the GAC as well as consensus advice from the GAC pursuant to Section 3.1 of the New gTLD Program Applicant Guidebook. Amy's presentation included a discussion of the prior actions taken by the Committee with respect to the GAC's advice on .HALAL and .ISLAM.

The Committee discussed the BGC's recommendation, and George Sadowsky moved and Mike Silber seconded the proposed resolution. The Committee then took the following action:

Whereas, Asia Green IT System Ltd.'s ("Requester") Reconsideration Request 14-7, sought reconsideration of the New gTLD Program Committee's ("NGPC") 5 February 2014 resolution deferring the contracting process for the .ISLAM and .HALAL strings until certain noted conflicts have been resolved.

Whereas, Request 14-7 also seeks reconsideration of an alleged staff action implementing the NGPC's 5 February 2014 resolution through the 7 February 2014 letter from Steve Crocker, Chairman of the ICANN Board, to the Requester.

Whereas, the Board of Governance Committee ("BGC") considered the issues raised in Request 14-7.

Whereas, the BGC recommended that Request 14-7 be denied because the Requester has not stated proper grounds for reconsideration and the New gTLD Program Committee agrees.

Resolved (2014.03.22.NG04), the New gTLD Program Committee adopts the BGC Recommendation on Reconsideration Request 14-7, which can be found at <http://www.icann.org/en/groups/board/governance/reconsideration/14->

[7/recommendation-agit-13mar14-en.pdf](#) [PDF, 149 KB].

**All members of the Committee present voted in favor of Resolution 2014.03.22.NG04. Olga Madruga-Forti and Gonzalo Navarro were unavailable to vote on the Resolution. The Resolution carried.**

## Rationale for Resolution 2014.03.22.NG04

### I. Brief Summary

The Requester applied for .ISLAM and .HALAL. The applications were the subject of two [GAC](#)<sup>1</sup> Early Warning notices, an evaluation by the Independent Objector, an objection filed with the [ICC](#),<sup>2</sup> three issuances of related [GAC](#) Advice, and significant objections from a number of other entities and governments. Ultimately, the NGPC resolved to take no further action on the .ISLAM and .HALAL applications until and unless the Requester resolves the conflicts between its applications and the objections raised by the organizations and governments identified by the NGPC. The Requester claims that the NGPC failed to consider material information in taking its action and also claims that [ICANN](#) staff violated an established policy or procedure by failing to inform the Requester how it should resolve the noted conflicts.

The BGC concluded that there is no indication that the NGPC failed to consider material information in reaching its 5 February 2014 Resolution. Rather, the record demonstrates that the NGPC was well aware of the information Requester claims was material to the 5 February 2014 Resolution. In addition, the Requester has not identified an [ICANN](#) staff action that violated an established [ICANN](#) policy or procedure. Instead, the action challenged by the Requester was that of the Board, not staff, and, in any event, the Requester has failed to identify any [ICANN](#) policy or procedure violated by that action. Given this, the BGC recommends that Request 14-7 be denied. The NGPC agrees.

### II. Facts

#### A. Relevant Background Facts

The Requester Asia Green IT System Ltd. ("Requester") applied for .ISLAM and .HALAL ("Requester's Applications").

On 20 November 2012, the Requester's Applications received [GAC](#) Early Warning notices from two [GAC](#) members: (i) the United Arab Emirates ("UAE") (<https://gacweb.icann.org/download/attachments/27131927/Islam-AE-23450.pdf> [PDF, 71 KB]; <https://gacweb.icann.org/download/attachments/27131927/Halal-AE-60793.pdf> [PDF, 123 KB]); and (ii) India (<https://gacweb.icann.org/download/attachments/27131927/Islam-IN-23459.pdf> [PDF, 81 KB]; <https://gacweb.icann.org/download/attachments/27131927/Halal-IN-60793.pdf> [PDF, 89 KB].) Both members expressed serious concerns regarding the Requester's Applications, including a perceived lack of community involvement in, and support for, the Requester's Applications.

In December 2012, the Independent Objector ("IO") issued a preliminary assessment on the Requester's application for .ISLAM, noting that the application received numerous public comments expressing opposition to a private entity, namely the Requester, having control over a [gTLD](#) that relates to religion ("IO's Assessment on .ISLAM"). (<http://www.independent-objector-newgtlds.org/home/the-independent->

[objector-s-comments-on-controversial-applications/islam-general-comment.](#)) The Requester submitted responses to the IO's initial concerns, and the IO ultimately concluded that neither an objection on public interest grounds nor community grounds to the application for .ISLAM string was warranted. (See IO's Assessment on .ISLAM.)

On 13 March 2013, the Telecommunications Regulatory Authority of the UAE filed community objections with the ICC to the Requester's Applications ("Community Objections").<sup>3</sup>

On 11 April 2013, the GAC issued its Beijing Communiqué, which included advice to ICANN regarding the Requester's Applications, among others. Specifically, the GAC advised the Board that, pursuant to Section 3.1 of the Applicant Guidebook ("Guidebook"), some GAC members:

[H]ave noted that the applications for .islam and .halal lack community involvement and support. It is the view of these GAC members that these applications should not proceed.

(Beijing Communiqué, Pg. 3, available at <http://www.icann.org/en/news/correspondence/gac-to-board-18apr13-en.pdf> [PDF, 156 KB].)

On 18 April 2013, ICANN published the GAC Advice thereby notifying the Requester and triggering the 21-day applicant response period. Requester submitted to the Board timely responses to the GAC Advice, which included, among other things, a summary of the support received for the Requester's Applications and a draft of the proposed governance model for the .ISLAM string ("Requester's Responses to GAC Advice"). (<http://newgtlds.icann.org/sites/default/files/applicants/23may13/gac-advice-response-1-2130-23450-en.pdf> [PDF, 2.4 MB]; <http://newgtlds.icann.org/sites/default/files/applicants/23may13/gac-advice-response-1-2131-60793-en.pdf> [PDF, 906 KB]; see also Summary and Analysis of Applicant Responses to GAC Advice, Briefing Materials 3 ("NGPC Briefing Material") available at <http://www.icann.org/en/groups/board/documents/briefing-materials-3-04jun13-en.pdf> [PDF, 515 KB].)

On 4 June 2013, the NGPC adopted the NGPC Scorecard ("4 June 2013 Resolution") setting forth the NGPC's response to the GAC Advice found in the Beijing Communiqué ("NGPC Scorecard"). (<http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-04jun13-en.htm#1.a.>; <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-04jun13-en.pdf> [PDF, 563 KB].) With respect to the .ISLAM and .HALAL strings, the NGPC Scorecard stated in pertinent part:

On 4 June 2013, the NGPC adopted the NGPC Scorecard ("4 June 2013 Resolution") setting forth the NGPC's response to the GAC Advice found in the Beijing Communiqué ("NGPC Scorecard"). (<http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-04jun13-en.htm#1.a.>; <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld->

[annex-1-04jun13-en.pdf](#) [PDF, 563 KB].) With respect to the .ISLAM and .HALAL strings, the NGPC Scorecard stated in pertinent part:

The NGPC accepts [the GAC] advice.... Pursuant to Section 3.1.ii of the [Guidebook], the NGPC stands ready to enter into dialogue with the GAC on this matter. We look forward to liaising with the GAC as to how such dialogue should be conducted.

(NGPC Scorecard, Pg. 3.) The NGPC Scorecard further noted the Community Objections filed against the Requester's Applications and indicated that "these applications cannot move to the contracting phase until the objections are resolved." (Id.)

On 18 July 2013, pursuant to Section 3.1.II of the Guidebook, members of the NGPC entered into a dialogue with the governments concerned about the .ISLAM and .HALAL strings to understand the scope of the concerns expressed in the GAC's Advice in the Beijing Communiqué.

On 25 July 2013, the Ministry of Communications for the State of Kuwait sent a letter to ICANN expressing its support for UAE's Community Objections and identifying concerns that the Requester did not receive the support of the community, the Requester's Applications are not in the best interest of the Islamic community, and the strings "should be managed and operated by the community itself through a neutral body that truly represents the Islamic community such as the Organization of Islamic Cooperation." (<http://www.icann.org/en/news/correspondence/al-qattan-to-icann-icc-25jul13-en.pdf> [PDF, 103 KB])

On 4 September 2013, in a letter to the NGPC Chairman, the Republic of Lebanon expressed general support for the .ISLAM and .HALAL strings, but stated that it strongly believes "the management and operation of these TLDs must be conducted by a neutral non-governmental multi-stakeholder group representing, at least, the larger Muslim community." (<http://www.icann.org/en/news/correspondence/hoballah-to-chalaby-et-al-04sep13-en.pdf> [PDF, 586 KB].)

On 24 October 2013, the expert panel ("Panel") appointed by the ICC to consider UAE's Community Objections rendered two separate Expert Determinations ("Determinations") in favor of the Requester.<sup>4</sup> Based on the submissions and evidence provided by the parties, the Panel determined that UAE failed to demonstrate substantial opposition from the community to the Requester's Applications or that the Applications created a likelihood of material detriment to the rights or legitimate interests of a significant portion of the relevant community. (.ISLAM Determination, ¶ 157; .HALAL Determination, ¶ 164.) The Panel dismissed the Community Objections and deemed the Requester the prevailing party. (.ISLAM Determination, ¶ 158; .HALAL Determination, ¶ 165.)

On 4 November 2013, the Secretary General of the Organization of Islamic Cooperation ("OIC") submitted a letter to the GAC Chair, stating that, as the "second largest intergovernmental organization with 57 Member States spread across four continents" and the "sole official representative of 1.6 million Muslims," the Member States of the OIC officially opposed the use

of the .ISLAM and .HALAL strings "by any entity not representing the collective voice of the Muslim people" ("4 November 2013 OIC Letter to GAC Chair".) (<http://www.icann.org/en/news/correspondence/crocker-to-dryden-11nov13-en.pdf> [PDF, 1.6 MB].)

On 11 November 2013, having received a copy of the OIC's 4 November 2013 letter, the ICANN Board Chairman sent a letter to the GAC Chair, noting that the NGPC has not taken any final action on the .ISLAM and .HALAL applications while they were subject to formal objections. The letter further stated that since the objection proceedings have concluded, the NGPC will wait for any additional GAC input regarding the strings and stands ready to discuss the applications if additional dialog would be helpful. (Cover Letter to 4 November 2013 OIC Letter to GAC Chair.)

On 21 November 2013, the GAC issued its Buenos Aires Communiqué, which stated the following with respect to the Requester's Applications:

GAC took note of letters sent by the OIC and the ICANN Chairman in relation to the strings .islam and .halal. The GAC has previously provided advice in its Beijing Communiqué, when it concluded its discussions on these strings. The GAC Chair will respond to the OIC correspondence accordingly, noting the OIC's plans to hold a meeting in early December. The GAC chair will also respond to the ICANN Chair's correspondence in similar terms.

(Buenos Aires Communiqué, Pg. 4, available at [https://gacweb.icann.org/download/attachments/27132037/FINAL\\_Buenos\\_Aires\\_GAC\\_Communique\\_20131120.pdf?version=1&modificationDate=1385055905332&api=v2](https://gacweb.icann.org/download/attachments/27132037/FINAL_Buenos_Aires_GAC_Communique_20131120.pdf?version=1&modificationDate=1385055905332&api=v2) [PDF, 97 KB].)

On 29 November 2013, the GAC Chair responded to the ICANN Board Chairman's 11 November 2013 correspondence, confirming that the GAC has concluded its discussion on the Requester's Applications and stating that "no further GAC input on this matter can be expected." (<http://www.icann.org/en/news/correspondence/dryden-to-crocker-29nov13-en.pdf> [PDF, 73 KB].)

On 4 December 2013, the Requester submitted a letter to the ICANN Board Chairman requesting contracts for .ISLAM and .HALAL "as soon as possible." (<http://www.icann.org/en/news/correspondence/abbasnia-to-crocker-04dec13-en.pdf> [PDF, 140 KB].)

On 19 December 2013, the Secretary General of the OIC sent a letter to the ICANN Board Chairman, stating that the Foreign Ministers of the 57 Muslim Member States of the OIC have unanimously approved and adopted a resolution officially objecting to the .ISLAM and .HALAL strings and indicating that the resolution "underlines the need for constructive engagement between the ICANN and OIC as well as between ICANN and OIC Member States." (<http://www.icann.org/en/news/correspondence/ihsanoglu-to-crocker-19dec13-en.pdf> [PDF, 1.1 MB].)

On 24 December 2013, the Ministry of Communication and Information Technology on behalf of the government of Indonesia sent a letter to the NGPC Chairman, stating that Indonesia "strongly objects" to the .ISLAM

string and, in principle, "approves" the .HALAL string "provided that it is managed properly and responsibly."

(<http://www.icann.org/en/news/correspondence/iskandar-to-chalaby-24dec13-en.pdf> [PDF, 1.9 MB].)

On 30 December 2013, the Requester submitted a letter to the ICANN Board Chairman challenging the nature and extent of the OIC's opposition to the Requester's Applications, reiterating its proposed policies and procedures for governance of .ISLAM and .HALAL, and requesting to proceed to the contracting phase.

(<http://www.icann.org/en/news/correspondence/abbasnia-to-crocker-30dec13-en.pdf> [PDF, 1.9 MB].)

On 5 February 2014, the NGPC adopted an updated iteration of the NGPC Scorecard ("Actions and Updates Scorecard"). (5 February 2014 Resolution, available at

<http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-05feb14-en.htm#1.a.rationale>; Actions and Updates Scorecard, available at <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-05feb14-en.pdf> [PDF, 371 KB].) With respect to the Requester's Applications, the NGPC's Actions and Updates Scorecard stated in pertinent part:

The NGPC takes note of the significant concerns expressed during the dialogue, and additional opposition raised, including by the OIC, which represents 1.6 billion members of the Muslim community.

(Action and Updates Scorecard, Pg. 8.) In addition, the NGPC directed the transmission of a letter from the NGPC, via the Chairman of the Board, to the Requester ("7 February 2013 NGPC Letter to the Requester").

(<http://www.icann.org/en/news/correspondence/crocker-to-abbasnia-07feb14-en.pdf> [PDF, 540 KB].) The 7 February 2013 NGPC Letter to the Requester acknowledges the Requester's stated commitment to a multi-stakeholder governance model, but states:

Despite these commitments, a substantial body of opposition urges ICANN not to delegate the strings .HALAL and .ISLAM....

There seems to be a conflict between the commitments made in your letters and the concerns raised in letters to ICANN urging ICANN not to delegate the strings. Given these circumstances, the NGPC will not address the applications further until such time as the noted conflicts have been resolved.

(7 February 2013 NGPC Letter to the Requester, at Pg. 2.)

On 26 February 2014, the Requester filed Request 14-7.

#### B. Requester's Claims

The Requester claims that the NGPC failed to consider material

information when it approved the 5 February 2014 Resolution. Specifically, the Requester contends that the NGPC ignored, or was not otherwise made aware of, material information including: (1) The ICC's Determinations dismissing the Community Objections; (2) the Requester's proposed multi-stakeholder governance model; and (3) the differences between the .ISLAM and .HALAL Applications. In addition, the Requester claims that the 7 February 2013 NGPC Letter to the Requester was a staff action that violates the policies set forth in the Guidebook and underlying the gTLD program because it fails to provide the Requester with guidance on how to resolve the conflicts identified in the letter.

### III. Issues

The issue for reconsideration is whether the NGPC failed to consider material information in approving the 5 February 2014 Resolution, which deferred the contracting process for the Requester's Application until the identified conflicts have been resolved. Specifically, the issue is whether the NGPC ignored, or was not otherwise made aware of, the information identified in Section I.B, above. An additional issue for reconsideration is whether the 7 February 2013 NGPC Letter to the Requester was a staff action that violated ICANN policies because it failed to provide clear criteria for the Requester to resolve conflicts with the objecting entities and countries.

### IV. The Relevant Standards for Evaluating Reconsideration Requests

ICANN's Bylaws call for the BGC to evaluate and make recommendations to the Board with respect to Reconsideration Requests. See Article IV, Section 2 of the Bylaws. The NGPC, bestowed with the powers of the Board in this instance, has reviewed and thoroughly considered the BGC Recommendation on Request 14-7 and finds the analysis sound.<sup>5</sup>

### V. Analysis and Rationale

#### A. The Requester Has Not Demonstrated That The NGPC Failed To Consider Material Information When It Approved The 5 February 2014 Resolution.

The BGC concluded, and the NGPC agrees, that the Requester has not sufficiently stated a request for reconsideration of the 5 February 2014 Resolution. The Requester has identified some information that the NGPC had available to it and purportedly should have considered before approving the 5 February 2014 Resolution. But the Requester has failed to demonstrate that the NGPC did not consider this information or that the information was material and would have changed the NGPC's decision to defer the contracting process for the Requester's Applications until certain conflicts have been resolved.

First, the BGC determined that the Requester has not demonstrated that the NGPC failed to consider the Determinations dismissing the Community Objections, or that the Determinations were material to the NGPC's Resolution. There is no evidence that the NGPC did not consider the ICC's Determinations on the Community Objections in adopting the challenged Resolution. To the contrary, in the NGPC's Actions and Updates Scorecard that was adopted by the NGPC as part of its 5 February 2014 Resolution, the NGPC specifically referenced the ICC's Determination on the Community Objections. Moreover, in communications with the GAC, ICANN noted that it did not take any final action on the Requester's Applications while the applications were subject to formal objections, but that the "objection proceedings have concluded." (Cover Letter to 4

November 2013 OIC Letter to GAC Chair.) The BGC also concluded that the Requester has also failed to demonstrate that the ICC's Determinations were material to the NGPC's Resolution or otherwise identify how the Determinations would have changed the actions taken by the NGPC. The NGPC agrees.

Second, the BGC concluded and the NGPC agrees that the Requester has not demonstrated that the NGPC failed to consider the Requester's proposed multi-stakeholder governance model, or that the model was material to the NGPC's Resolution. The Requester's assertion that the NGPC failed to consider the Requester's proposed "multi-stakeholder governance model" in reaching its 5 February 2014 Resolution is unsupported. The BGC noted that the Requester's purported multi-stakeholder governance model was a subject of the Beijing Communiqué, the Requester's response to the Beijing Communiqué and the ICC's Determinations. The NGPC's 5 February 2014 Resolution makes clear that the NGPC considered the Beijing Communiqué, the NGPC Briefing Material summarized the Requester's response to the Beijing Communiqué, and, as set forth above, the NGPC was well aware of the ICC's Determinations. Moreover, as the Requester concedes, the 7 February 2013 NGPC Letter to the Requester identifies (and applauds) a 4 December 2013 letter and a 30 December 2013 letter from the Requester to ICANN relating to its proposed multi-stakeholder governance model. Finally, the Requester does not identify any other materials relating to the Requester's proposed governance model that should have, or could have, been considered by the NGPC before reaching its 5 February 2014 Resolution.

In addition, the BGC noted that the Requester makes no effort to demonstrate that the Requester's proposed governance model was material to the NGPC's resolution or otherwise identify how the proposed model would have changed the action taken by the NGPC. Rather, the 7 February 2013 NGPC Letter to the Requester shows that the NGPC was concerned with conflicts between the Requester's purported model and the claims made about that model in the letters urging ICANN not to proceed with .ISLAM and .HALAL.

Third, the BGC determined and the NGPC agrees that the Requester has not demonstrated that the NGPC failed to consider differences between the .ISLAM and the .HALAL Applications, or that such differences were material to the NGPC's Resolution. The Requester claims that there are differences between the .ISLAM and .HALAL Applications and that the NGPC failed to consider these differences in reaching its 5 February 2014 Resolution. The BGC noted that the Requester's only support for this claim is a letter from Indonesia objecting to .ISLAM, but "endors[ing]" .HALAL, and a letter from the Islamic Chamber Research and Information Center ("ICRIC") expressing support for .HALAL. The BGC further noted that the record indicates that the NGPC reviewed both of these letters before taking its action. Moreover, the Requester has not explained how consideration of these two letters is material to the NGPC's Resolution or otherwise identify how the letters would have changed the action taken by the NGPC.

- B. The Requester Has Not Demonstrated That The ICANN Staff Took An Action Inconsistent With An Established ICANN Policy Or Process.

The BGC concluded that the Requester's claim that the 7 February 2013 NGPC Letter to the Requester was a staff action that violates the policies set forth in the Guidebook and underlying the New gTLD Program by failing to provide the Requester with guidance on how it should resolve the conflicts associated with the .ISLAM and .HALAL Applications is not a proper basis for seeking reconsideration.

To challenge a staff action, the Requester would need to demonstrate that it was adversely affected by a staff action that violated an established ICANN policy or process. (Bylaws, Art. IV., Section 2.2.) The 7 February 2013 NGPC Letter to the Requester was not a staff action, it was a Board (or NGPC) action. The letter was sent to the Requester under the signature of the Chair of the ICANN Board, Stephen D. Crocker. More importantly, the NGPC, delegated with all legal and decision making authority of the Board relating to the New gTLD Program, (<http://www.icann.org/en/groups/board/documents/resolutions-10apr12-en.htm>), directed transmission of the letter to explain its reasoning for the 5 February 2014 Resolution. (Actions and Updates Scorecard, Pg. 8.) As such, the BGC concluded that the 7 February 2013 NGPC Letter to the Requester is a Board (or NGPC) action and cannot be challenged as a staff action.

The BGC further noted that even if this were to be considered a staff action, which it is not, there is no established ICANN policy or procedure that requires the ICANN Board or the NGPC to provide gTLD applicants with individualized explanations or direction on what the applicants should do next.

#### VI. Decision

The NGPC had the opportunity to consider all of the materials submitted by or on behalf of the Requestor (see <http://www.icann.org/en/groups/board/governance/reconsideration/14-7>) or that otherwise relate to Request 14-7. Following consideration of all relevant information provided, the NGPC reviewed and has adopted the BGC's Recommendation on Request 14-7, which shall be deemed a part of this Rationale and the full text of which can be found at <http://www.icann.org/en/groups/board/governance/reconsideration/14-7/recommendation-agit-13mar14-en.pdf> [PDF, 149 KB].

Adopting the BGC's recommendation has no financial impact on ICANN and will not negatively impact the systemic security, stability and resiliency of the domain name system.

This decision is an Organizational Administrative Function that does not require public comment.

#### f. Update on proposed review mechanism for perceived inconsistent string confusion objection determinations

Amy Stathos provided a status update to the Committee regarding the public comments issued to date on the proposed review mechanism to address perceived inconsistent String Confusion Objection Expert Determinations, noting that the public comment reply period would remain open until 3 April 2014. Amy noted that staff had begun work to provide an initial analysis of the

comments received to date, and she highlighted a few key themes from the comments. She reported that some commenters suggest that the Committee should not adopt the proposed review mechanism, or any review mechanism, while others commenters suggest that the review mechanism be expanded beyond the two String Confusion Objections identified in the proposed review mechanism. Amy noted that there was a range of views as to how broad the scope should be, including some comments that recommended that all objection processes be included as part of the review mechanism.

As part of the status update, Amy noted that some of the applicants directly involved in the .CAR/.CARS and .CAM/.COM objections submitted comments during the public comment forum.

Amy reported that upon the closing of the Reply Comment period, staff would prepare a full summary and report of public comments for consideration by the Committee during its upcoming workshop in Los Angeles.

The Chair called the meeting to a close.

Published on 15 May 2014

<sup>1</sup> [Governmental Advisory Committee](#).

<sup>2</sup> [International Centre for Expertise of the International Chamber of Commerce](#).

<sup>3</sup> UAE's Community Objections asserted that there is "substantial opposition to [each] gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted." (Guidebook, Section 3.2.1; New gTLD Dispute Resolution Procedure ("Procedure"), Art. 2(e).)

<sup>4</sup> .ISLAM Determination, available at <http://www.iccwbo.org/Data/Documents/Buisness-Services/Dispute-Resolution-Services/Expertise/ICANN-New-gTLD-Dispute-Resolution/EXP-430-ICANN-47-Expert-Determination/> [PDF, 174 KB]; .HALAL Determination, available at <http://www.iccwbo.org/Data/Documents/Buisness-Services/Dispute-Resolution-Services/Expertise/ICANN-New-gTLD-Dispute-Resolution/EXP-427-ICANN-44-Expert-Determination/> [PDF, 276 KB].

<sup>5</sup> Having a reconsideration process whereby the BGC reviews and, if it chooses, makes a recommendation to the Board/NGPC for approval, positively affects ICANN's transparency and accountability. It provides an avenue for the community to ensure that staff and the Board are acting in accordance with ICANN's policies, Bylaws, and Articles of Incorporation.

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President's Corner Staff	Registry Liaison AOC Review	Reconsideration Ombudsman	Document Disclosure Planning Dashboard Beta RFPs Litigation Correspondence	WHOIS
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**R-31**

**RESPONDENT'S EXHIBIT**

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## Resources

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Domain Names Universal  
Acceptance  
Initiative

## Minutes | Regular Meeting of the New gTLD Program Committee

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29 Apr 2014

**Note:** On 10 April 2012, the Board established the [New gTLD Program Committee](#), comprised of all voting members of the Board that are not conflicted with respect to the [New gTLD Program](#). The Committee was granted all of the powers of the Board (subject to the limitations set forth by law, the Articles of Incorporation, Bylaws or [ICANN's Conflicts of Interest Policy](#)) to exercise Board-level authority for any and all issues that may arise relating to the [New gTLD Program](#). The full scope of the Committee's authority is set forth in its charter at <http://www.icann.org/en/groups/board/new-gTLD>.

**A Regular Meeting of the New gTLD Program Committee of the [ICANN Board of Directors](#) was held in Pasadena, California on 29 April 2014 at 14:15 local time.**

**Committee Chairman Cherine Chalaby promptly called the meeting to order.**

**In addition to the Chair the following Directors participated in all or part of the meeting: Fadi Chehadé (President and CEO, [ICANN](#)), Steve Crocker (Board Chairman), Chris Disspain, Bill Graham, Bruno Lanvin, Olga Madruga-Forti, Erika Mann, Gonzalo Navarro, Ray Plzak, George Sadowsky, Mike Silber, and Kuo-Wei Wu.**

**Jonne Soininen ([IETF Liaison](#)) was in attendance as a non-voting liaison to the Committee. Heather Dryden was in attendance as an observer to the Committee.**

**Board Member Elect: Rinalia Abdul Rahim (observing).**

Policy

**Secretary: John Jeffrey (General Counsel and Secretary).**

Public Comment

**ICANN Executives and Staff in attendance for all or part of the meeting: Akram Atallah (President, Global Domains Division); Megan Bishop (Board Support Coordinator); Michelle Bright (Board Support Manager); Xavier Calvez (Chief Financial Officer); Samantha Eisner (Senior Counsel); Dan Halloran (Deputy General Counsel); Jamie Hedlund (Advisor to the President/CEO); Marika Konings (Senior Director, Policy Development Support); Elizabeth Le (Senior Counsel); Olof Nordling (Senior Director, GAC Relations); Erika Randall (Counsel); Ashwin Rangan (Chief Innovation & Information Officer); Amy Stathos (Deputy General Counsel); and Christine Willett (Vice President, gTLD Operations).**

Technical Functions

Contact

Help

**These are the Minutes of the Meeting of the New gTLD Program Committee, which took place on 29 April 2014.**

#### 1. **Main Agenda**

- a. [GAC Advice Update](#)
- b. [Perceived Inconsistent String Confusion Objection Expert Determinations – Review Mechanism](#)
- c. [New gTLD Auction Rules](#)
- d. [New gTLD Program Financial Update](#)

#### 1. Main Agenda:

##### a. [GAC Advice Update](#)

The Committee continued its discussions of remaining open items of advice from the Governmental [Advisory Committee \(GAC\)](#), focusing on the advice issued in the Durban Communiqué concerning the applications for .AMAZON and related [IDNs](#) in Japanese and Chinese. In the Durban Communiqué, the [GAC](#) advised that it had reached consensus on "[GAC Objection Advice according to Module 3.1 part I of the Applicant Guidebook](#)" on the applications for .AMAZON and related [IDNs](#) in Japanese and Chinese.

Chris Disspain outlined potential alternatives for the Committee

to discuss to address the GAC's advice, and the next steps that would be required depending upon the course of action taken. The Committee explored potential consequences associated with taking each action.

Members of the Committee weighed in on the relative merits and disadvantages of various options to address the GAC advice, and also suggested alternative options. Olga Madruga-Forti commented that the Committee also should consider the GAC advice in the context of the multistakeholder model.

The Committee discussed whether there were opportunities for the relevant impacted parties to engage in additional discussion. The President and CEO made note of the steps previously taken by the impacted parties to engage in discussions to address the concerns noted in the GAC Early Warning. George Sadowsky asked the Committee to consider how the potential options being contemplated to address the GAC advice would impact the possibility of the impacted parties engaging in further discussions.

The Committee considered correspondence and comments submitted by the impacted parties throughout the process. Bill Graham commented on the responses provided by certain governments to the analysis prepared by Jerome Passa that was transmitted to the GAC on 7 April 2014, and asked whether the concerned governments submitted any additional comments. Chris asked whether any additional information would be helpful to the Committee as it continued its deliberations on the matter, and the Committee considered whether additional information was needed.

The Committee reviewed the applicable Applicant Guidebook sections regarding consensus advice from the GAC about a particular application, and considered the implications of the GAC issuing such consensus advice. Heather Dryden distinguished the GAC's consensus advice on .AMAZON given pursuant to the Applicant Guidebook from other non-consensus advice from the GAC.

Gonzalo Navarro suggested that the Committee consider whether there were relevant precedents from previous Committee decisions that should be considered as part of the Committee's deliberation on the .AMAZON GAC advice. The

Committee discussed whether the potential options being discussed were consistent with its previous treatment of similarly situated GAC advice and corresponding Committee actions.

The Committee analyzed whether the impacted parties would benefit from having additional time to continue to address the noted concerns. Some members noted that a considerable amount of time had elapsed from when the advice was offered by the GAC, and queried whether additional time would be helpful.

The Chair directed staff to schedule a meeting in May so that the Committee could continue its discussion on .AMAZON (and related IDNs), in addition to other open items of GAC advice.

Akram Atallah provided the Committee with an update on the efforts of some of the relevant impacted parties to continue negotiations on potential safeguards for the .WINE and .VIN gTLDs in light of the Committee's action on 4 April 2014 addressing the GAC advice concerning .WINE and .VIN. The Committee engaged in a discussion about the appropriate level of involvement of ICANN for participating in any discussions between the relevant impacted parties, if any.

**b. Perceived Inconsistent String Confusion  
Objection Expert Determinations – Review  
Mechanism**

The Committee did not consider this agenda item and decided that it should be considered at a subsequent meeting.

**c. New gTLD Auction Rules**

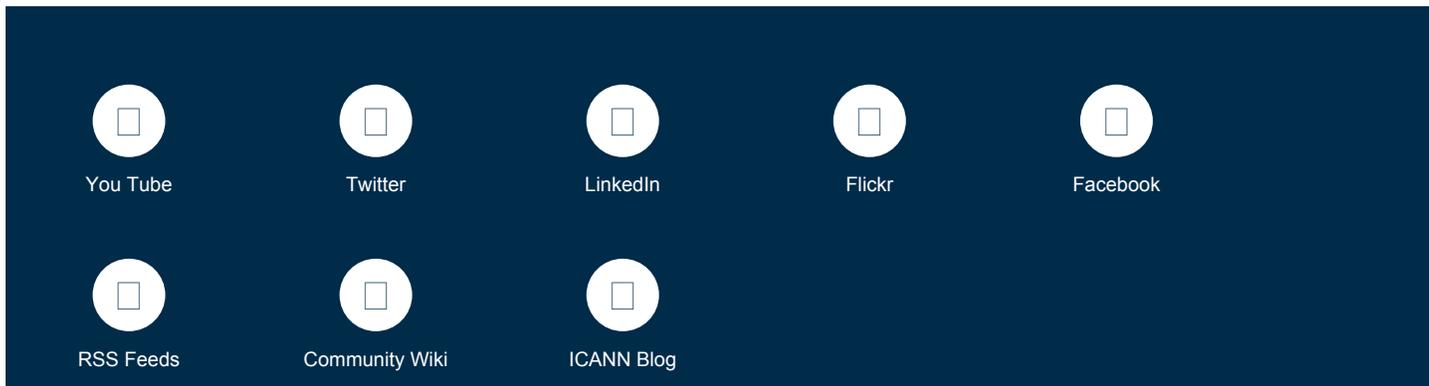
The Committee did not consider this agenda item and decided that it should be considered at a subsequent meeting.

**d. New gTLD Program Financial Update**

The Committee did not consider this agenda item and decided that it should be considered at a subsequent meeting.

The Chair called the meeting to a close.

Published on 23 June 2014



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**Help**

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- Domain Name Dispute Resolution
- Name Collision
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- WHOIS

**R-32**

**RESPONDENT'S EXHIBIT**



differences of juvenile fish as they pass downstream through Lake Pateros and Wells Dam. For modification 1, PUD GC requests an increase in the take of juvenile, endangered, UCR steelhead associated with a study designed to inventory fish species in Wells reservoir on the Columbia River. ESA-listed fish are proposed to be observed by SCUBA divers or collected in beach seines, anesthetized, examined, allowed to recover, and released. Modification 1 is requested to be valid for the duration of the permit. Permit 1116 expires on December 31, 2002.

Dated: June 4, 1998.

**Patricia A. Montanio,**

Deputy Director, Office of Protected Resources, National Marine Fisheries Service. [FR Doc. 98-15439 Filed 6-9-98; 8:45 am]

BILLING CODE 3510-22-F

## DEPARTMENT OF COMMERCE

### National Telecommunications and Information Administration

[Docket Number: 980212036-8146-02]

#### Management of Internet Names and Addresses

**AGENCY:** National Telecommunications and Information Administration, Commerce.

**ACTION:** Statement of policy.

**SUMMARY:** On July 1, 1997, as part of the Clinton Administration's *Framework for Global Electronic Commerce*,<sup>1</sup> the President directed the Secretary of Commerce to privatize the domain name system (DNS) in a manner that increases competition and facilitates international participation in its management.

Accordingly, on July 2, 1997, the Department of Commerce issued a Request for Comments (RFC) on DNS administration. The RFC solicited public input on issues relating to the overall framework of the DNS administration, the creation of new top-level domains, policies for domain name registrars, and trademark issues. During the comment period, more than 430 comments were received, amounting to some 1500 pages.<sup>2</sup>

On January 30, 1998, the National Telecommunications and Information Administration (NTIA), an agency of the Department of Commerce, issued for comment, *A Proposal to Improve the Technical Management of Internet Names and Addresses*. The proposed

rulemaking, or "Green Paper," was published in the **Federal Register** on February 20, 1998, providing opportunity for public comment. NTIA received more than 650 comments, as of March 23, 1998, when the comment period closed.<sup>3</sup>

The Green Paper proposed certain actions designed to privatize the management of Internet names and addresses in a manner that allows for the development of robust competition and facilitates global participation in Internet management. The Green Paper proposed for discussion a variety of issues relating to DNS management including private sector creation of a new not-for-profit corporation (the "new corporation") managed by a globally and functionally representative Board of Directors.

**EFFECTIVE DATE:** This general statement of policy is not subject to the delay in effective date required of substantive rules under 5 U.S.C. § 553(d). It does not contain mandatory provisions and does not itself have the force and effect of law.<sup>4</sup> Therefore, the effective date of this policy statement is June 10, 1998.

**FOR FURTHER INFORMATION CONTACT:** Karen Rose, Office of International Affairs (OIA), Rm 4701, National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, 14<sup>th</sup> and Constitution Ave., NW, Washington, DC., 20230. Telephone: (202) 482-0365. E-mail: [dnspolicy@ntia.doc.gov](mailto:dnspolicy@ntia.doc.gov)

**Authority:** 15 U.S.C. 1512; 15 U.S.C. 1525; 47 U.S.C. 902(b)(2)(H); 47 U.S.C. 902(b)(2)(I); 47 U.S.C. 902(b)(2)(M); 47 U.S.C. 904(c)(1).

#### SUPPLEMENTARY INFORMATION:

##### Background

Domain names are the familiar and easy-to-remember names for Internet computers (e.g., "www.ecommerce.gov"). They map to unique Internet Protocol (IP) numbers (e.g., 98.37.241.30) that serve as routing addresses on the Internet. The domain name system (DNS) translates Internet names into the IP numbers needed for transmission of information across the network.

<sup>3</sup> The RFC, the Green Paper, and comments received in response to both documents are available on the Internet at the following address: <http://www.ntia.doc.gov>. Additional comments were submitted after March 23, 1998. These comments have been considered and treated as part of the official record and have been separately posted at the same site, although the comments were not received by the deadline established in the February 20, 1998 **Federal Register** Notice.

<sup>4</sup> See Administrative Law Requirements at p. 19.

#### U.S. Role in DNS Development

More than 25 years ago, the U.S. Government began funding research necessary to develop packet-switching technology and communications networks, starting with the "ARPANET" network established by the Department of Defense's Advanced Research Projects Agency (DARPA) in the 1960s. ARPANET was later linked to other networks established by other government agencies, universities and research facilities. During the 1970s, DARPA also funded the development of a "network of networks;" this became known as the Internet, and the protocols that allowed the networks to intercommunicate became known as Internet protocols (IP).

As part of the ARPANET development work contracted to the University of California at Los Angeles (UCLA), Dr. Jon Postel, then a graduate student at the university, undertook the maintenance of a list of host names and addresses and also a list of documents prepared by ARPANET researchers, called Requests for Comments (RFCs). The lists and the RFCs were made available to the network community through the auspices of SRI International, under contract to DARPA and later the Defense Communication Agency (DCA) (now the Defense Information Systems Agency (DISA)) for performing the functions of the Network Information Center (the NIC).

After Dr. Postel moved from UCLA to the Information Sciences Institute (ISI) at the University of Southern California (USC), he continued to maintain the list of assigned Internet numbers and names under contracts with DARPA. SRI International continued to publish the lists. As the lists grew, DARPA permitted Dr. Postel to delegate additional administrative aspects of the list maintenance to SRI, under continuing technical oversight. Dr. Postel, under the DARPA contracts, also published a list of technical parameters that had been assigned for use by protocol developers. Eventually these functions collectively became known as the Internet Assigned Numbers Authority (IANA).

Until the early 1980s, the Internet was managed by DARPA, and used primarily for research purposes. Nonetheless, the task of maintaining the name list became onerous, and the Domain Name System (DNS) was developed to improve the process. Dr. Postel and SRI participated in DARPA's development and establishment of the technology and practices used by the DNS. By 1990, ARPANET was completely phased out.

<sup>1</sup> Available at <http://www.ecommerce.gov>.

<sup>2</sup> July 2, 1997 RFC and public comments are located at: <http://www.ntia.doc.gov/ntiahome/domainname/index.html>.

The National Science Foundation (NSF) has statutory authority for supporting and strengthening basic scientific research, engineering, and educational activities in the United States, including the maintenance of computer networks to connect research and educational institutions. Beginning in 1987, IBM, MCI and Merit developed NSFNET, a national high-speed network based on Internet protocols, under an award from NSF. NSFNET, the largest of the governmental networks, provided a "backbone" to connect other networks serving more than 4,000 research and educational institutions throughout the country. The National Aeronautics and Space Administration (NASA) and the U.S. Department of Energy also contributed backbone facilities.

In 1991-92, NSF assumed responsibility for coordinating and funding the management of the non-military portion of the Internet infrastructure. NSF solicited competitive proposals to provide a variety of infrastructure services, including domain name registration services. On December 31, 1992, NSF entered into a cooperative agreement with Network Solutions, Inc. (NSI) for some of these services, including the domain name registration services. Since that time, NSI has managed key registration, coordination, and maintenance functions of the Internet domain name system. NSI registers domain names in the generic top level domains (gTLDs) on a first come, first served basis and also maintains a directory linking domain names with the IP numbers of domain name servers. NSI also currently maintains the authoritative database of Internet registrations.

In 1992, the U.S. Congress gave NSF statutory authority to allow commercial activity on the NSFNET.<sup>5</sup> This facilitated connections between NSFNET and newly forming commercial network service providers, paving the way for today's Internet. Thus, the U.S. Government has played a pivotal role in creating the Internet as we know it today. The U.S. Government consistently encouraged bottom-up development of networking technologies, and throughout the course of its development, computer scientists from around the world have enriched the Internet and facilitated exploitation of its true potential. For example, scientists at CERN, in Switzerland, developed software, protocols and conventions that formed the basis of

today's vibrant World Wide Web. This type of pioneering Internet research and development continues in cooperative organizations and consortia throughout the world.

#### *DNS Management Today*

In recent years, commercial use of the Internet has expanded rapidly. As a legacy, however, major components of the domain name system are still performed by, or subject to, agreements with agencies of the U.S. Government.

(1) Assignment of numerical addresses to Internet users.

Every Internet computer has a unique IP number. IANA, headed by Dr. Jon Postel, coordinates this system by allocating blocks of numerical addresses to regional IP registries (ARIN in North America, RIPE in Europe, and APNIC in the Asia/Pacific region), under contract with DARPA. In turn, larger Internet service providers apply to the regional IP registries for blocks of IP addresses. The recipients of those address blocks then reassign addresses to smaller Internet service providers and to end users.

(2) Management of the system of registering names for Internet users.

The domain name space is constructed as a hierarchy. It is divided into top-level domains (TLDs), with each TLD then divided into second-level domains (SLDs), and so on. More than 200 national, or country-code, TLDs (ccTLDs) are administered by their corresponding governments or by private entities with the appropriate national government's acquiescence. A small set of gTLDs do not carry any national identifier, but denote the intended function of that portion of the domain space. For example, .com was established for commercial users, .org for not-for-profit organizations, and .net for network service providers. The registration and propagation of these key gTLDs are performed by NSI, under a five-year cooperative agreement with NSF. This agreement expires on September 30, 1998.

(3) Operation of the root server system.

The root server system is a set of thirteen file servers, which together contain authoritative databases listing all TLDs. Currently, NSI operates the "A" root server, which maintains the authoritative root database and replicates changes to the other root servers on a daily basis.

Different organizations, including NSI, operate the other 12 root servers.<sup>6</sup>

The U.S. Government plays a role in the operation of about half of the Internet's root servers. Universal name consistency on the Internet cannot be guaranteed without a set of authoritative and consistent roots. Without such consistency messages could not be routed with any certainty to the intended addresses.

(4) Protocol Assignment.

The Internet protocol suite, as defined by the Internet Engineering Task Force (IETF), contains many technical parameters, including protocol numbers, port numbers, autonomous system numbers, management information base object identifiers and others. The common use of these protocols by the Internet community requires that the particular values used in these fields be assigned uniquely. Currently, IANA, under contract with DARPA, makes these assignments and maintains a registry of the assigned values.

#### *The Need for Change*

From its origins as a U.S.-based research vehicle, the Internet is rapidly becoming an international medium for commerce, education and communication. The traditional means of organizing its technical functions need to evolve as well. The pressures for change are coming from many different quarters:

- There is widespread dissatisfaction about the absence of competition in domain name registration.
- Conflicts between trademark holders and domain name holders are becoming more common. Mechanisms for resolving these conflicts are expensive and cumbersome.
- Many commercial interests, staking their future on the successful growth of the Internet, are calling for a more formal and robust management structure.
- An increasing percentage of Internet users reside outside of the U.S., and those stakeholders want to participate in Internet coordination.
- As Internet names increasingly have commercial value, the decision to add new top-level domains cannot be made on an *ad hoc* basis by entities or individuals that are not formally accountable to the Internet community.
- As the Internet becomes commercial, it becomes less appropriate for U.S. research agencies to direct and fund these functions.

The Internet technical community has been actively debating DNS

<sup>5</sup> See Scientific and Advanced-Technology Act of 1992: Pub. L. 102-476 section 4(9). 106 Stat. 2297. 2300 (codified at 42 U.S.C. 1862 (a)).

<sup>6</sup> An unofficial diagram of the general geographic location and institutional affiliations of the 13 Internet root servers, prepared by Anthony

Rutkowski, is available at <<http://www.wia.org/pub/rooterv.html>>.

management policy for several years. Experimental registry systems offering name registration services in an alternative set of exclusive domains developed as early as January 1996. Although visible to only a fraction of Internet users, alternative systems such as the name.space, AlterNIC, and eDNS affiliated registries<sup>7</sup> contributed to the community's dialogue on the evolution of DNS administration.

In May of 1996, Dr. Postel proposed the creation of multiple, exclusive, competing top-level domain name registries. This proposal called for the introduction of up to 50 new competing domain name registries, each with the exclusive right to register names in up to three new top-level domains, for a total of 150 new TLDs. While some supported the proposal, the plan drew much criticism from the Internet technical community.<sup>8</sup> The paper was revised and reissued.<sup>9</sup> The Internet Society's (ISOC) board of trustees endorsed, in principle, the slightly revised but substantively similar version of the draft in June of 1996.

After considerable debate and redrafting failed to produce a consensus on DNS change, IANA and the Internet Society (ISOC) organized the International Ad Hoc Committee<sup>10</sup> (IAHC or the Ad Hoc Committee) in September 1996, to resolve DNS management issues. The World Intellectual Property Organization (WIPO) and the International Telecommunications Union (ITU) participated in the IAHC. The Federal Networking Council (FNC) participated in the early deliberations of the Ad Hoc Committee.

The IAHC issued a draft plan in December 1996 that introduced unique and thoughtful concepts for the evolution of DNS administration.<sup>11</sup> The final report proposed a memorandum of understanding (MoU) that would have established, initially, seven new gTLDs

<sup>7</sup> For further information about these systems see: name.space: <<http://namespace.pgmedia.net>>; AlterNIC: <<http://www.alternic.net>>; eDNS: <<http://www.edns.net>>. Reference to these organizations does not constitute an endorsement of their commercial activities.

<sup>8</sup> Lengthy discussions by the Internet technical community on DNS issues generally and on the Postel DNS proposal took place on the *newdom*, *com-priv*, *ietf* and *domain-policy* Internet mailing lists.

<sup>9</sup> See *draft-Postel-iana-ittld-admin-01.txt*; available at <<http://www.newdom.com/archive>>.

<sup>10</sup> For further information about the IAHC see: <<http://www.iahc.org>> and related links. Reference to this organization does not constitute an endorsement of the commercial activities of its related organizations.

<sup>11</sup> December 1996 draft: *draft-iahc-gtldspec-00.txt*; available at <<http://info.internet.isi.edu:80/in-drafts/files>>.

to be operated on a nonexclusive basis by a consortium of new private domain name registrars called the Council of Registrars (CORE).<sup>12</sup> Policy oversight would have been undertaken in a separate council called the Policy Oversight Committee (POC) with seats allocated to specified stakeholder groups. Further, the plan formally introduced mechanisms for resolving trademark/domain name disputes. Under the MoU, registrars for second-level domains would have been required to submit to mediation and arbitration, facilitated by WIPO, in the event of conflict with trademark holders.

Although the IAHC proposal gained support in many quarters of the Internet community, the IAHC process was criticized for its aggressive technology development and implementation schedule, for being dominated by the Internet engineering community, and for lacking participation by and input from business interests and others in the Internet community.<sup>13</sup> Others criticized the plan for failing to solve the competitive problems that were such a source of dissatisfaction among Internet users and for imposing unnecessary burdens on trademark holders. Although the POC responded by revising the original plan, demonstrating a commendable degree of flexibility, the proposal was not able to overcome initial criticism of both the plan and the process by which the plan was developed.<sup>14</sup> Important segments of the Internet community remained outside the IAHC process, criticizing it as insufficiently representative.<sup>15</sup>

As a result of the pressure to change DNS management, and in order to facilitate its withdrawal from DNS management, the U.S. Government, through the Department of Commerce and NTIA, sought public comment on the direction of U.S. policy with respect to DNS, issuing the Green Paper on January 30, 1998.<sup>16</sup> The approach outlined in the Green Paper adopted elements of other proposals, such as the

<sup>12</sup> The IAHC final report is available at <<http://www.iahc.org/draft-iahc-recommend-00.html>>.

<sup>13</sup> See generally public comments received in response to July 2, 1997 RFC located at <<http://www.ntia.doc.gov/ntiahome/domainname/email>>.

<sup>14</sup> For a discussion, see Congressional testimony of Assistant Secretary of Commerce Larry Irving, Before the House Committee on Science, Subcommittee on Basic Research, September 25, 1997 available at <<http://www.ntia.doc.gov/ntiahome/domainname/email>>.

<sup>15</sup> See generally public comments received in response to July 2, 1997 RFC located at <<http://www.ntia.doc.gov/ntiahome/domainname/email>>.

<sup>16</sup> The document was published in the **Federal Register** on February 20, 1998. (63 FR 8826 (Feb. 20, 1998)).

early Postel drafts and the IAHC gTLD-MoU.

*Comments and Response:* The following are summaries of and responses to the major comments that were received in response to NTIA's issuance of *A Proposal to Improve the Technical Management of Internet Names and Addresses*. As used herein, quantitative terms such as "some," "many," and "the majority of," reflect, roughly speaking, the proportion of comments addressing a particular issue but are not intended to summarize all comments received or the complete substance of all such comments.

#### 1. Principles for a New System

The Green Paper set out four principles to guide the evolution of the domain name system: stability, competition, private bottom-up coordination, and representation.

*Comments:* In general, commenters supported these principles, in some cases highlighting the importance of one or more of the principles. For example, a number of commenters emphasized the importance of establishing a body that fully reflects the broad diversity of the Internet community. Others stressed the need to preserve the bottom-up tradition of Internet governance. A limited number of commenters proposed additional principles for the new system, including principles related to the protection of human rights, free speech, open communication, and the preservation of the Internet as a public trust. Finally, some commenters who agreed that Internet stability is an important principle, nonetheless objected to the U.S. Government's assertion of any participatory role in ensuring such stability.

*Response:* The U.S. Government policy applies only to management of Internet names and addresses and does not set out a system of Internet "governance." Existing human rights and free speech protections will not be disturbed and, therefore, need not be specifically included in the core principles for DNS management. In addition, this policy is not intended to displace other legal regimes (international law, competition law, tax law and principles of international taxation, intellectual property law, etc.) that may already apply. The continued applicability of these systems as well as the principle of representation should ensure that DNS management proceeds in the interest of the Internet community as a whole. Finally, the U.S. Government believes that it would be irresponsible to withdraw from its existing management role without

taking steps to ensure the stability of the Internet during its transition to private sector management. On balance, the comments did not present any consensus for amending the principles outlined in the Green Paper.

## 2. The Coordinated Functions

The Green Paper identified four DNS functions to be performed on a coordinated, centralized basis in order to ensure that the Internet runs smoothly:

1. To set policy for and direct the allocation of IP number blocks;
2. To oversee the operation of the Internet root server system;
3. To oversee policy for determining the circumstances under which new top level domains would be added to the root system; and
4. To coordinate the development of other technical protocol parameters as needed to maintain universal connectivity on the Internet.

*Comments:* Most commenters agreed that these functions should be coordinated centrally, although a few argued that a system of authoritative roots is not technically necessary to ensure DNS stability. A number of commenters, however, noted that the fourth function, as delineated in the Green Paper, overstated the functions currently performed by IANA, attributing to it central management over an expanded set of functions, some of which are now carried out by the IETF.

*Response:* In order to preserve universal connectivity and the smooth operation of the Internet, the U.S. Government continues to believe, along with most commenters, that these four functions should be coordinated. In the absence of an authoritative root system, the potential for name collisions among competing sources for the same domain name could undermine the smooth functioning and stability of the Internet.

The Green Paper was not, however, intended to expand the responsibilities associated with Internet protocols beyond those currently performed by IANA. Specifically, management of DNS by the new corporation does not encompass the development of Internet technical parameters for other purposes by other organizations such as IETF. The fourth function should be restated accordingly:

- To coordinate the assignment of other Internet technical parameters as needed to maintain universal connectivity on the Internet.

## 3. Separation of Name and Number Authority

*Comments:* A number of commenters suggested that management of the domain name system should be separated from management of the IP number system. These commenters expressed the view that the numbering system is relatively technical and straightforward. They feared that tight linkage of domain name and IP number policy development would embroil the IP numbering system in the kind of controversy that has surrounded domain name issuance in recent months. These commenters also expressed concern that the development of alternative name and number systems could be inhibited by this controversy or delayed by those with vested interests in the existing system.

*Response:* The concerns expressed by the commenters are legitimate, but domain names and IP numbers must ultimately be coordinated to preserve universal connectivity on the Internet. Also, there are significant costs associated with establishing and operating two separate management entities.

However, there are organizational structures that could minimize the risks identified by commenters. For example, separate name and number councils could be formed within a single organization. Policy could be determined within the appropriate council that would submit its recommendations to the new corporation's Board of Directors for ratification.

## 4. Creation of the New Corporation and Management of the DNS

The Green Paper called for the creation of a new private, not-for-profit corporation<sup>17</sup> responsible for coordinating specific DNS functions for the benefit of the Internet as a whole. Under the Green Paper proposal, the U.S. Government<sup>18</sup> would gradually transfer these functions to the new corporation beginning as soon as possible, with the goal of having the new corporation carry out operational responsibility by October 1998. Under the Green Paper proposal, the U.S. Government would continue to

<sup>17</sup> As used herein, the term "new corporation" is intended to refer to an entity formally organized under well recognized and established business law standards.

<sup>18</sup> As noted in the Summary, the President directed the Secretary of Commerce to privatize DNS in a manner that increases competition and facilitates international participation in its management. Accordingly, the Department of Commerce will lead the coordination of the U.S. government's role in this transition.

participate in policy oversight until such time as the new corporation was established and stable, phasing out as soon as possible, but in no event later than September 30, 2000. The Green Paper suggested that the new corporation be incorporated in the United States in order to promote stability and facilitate the continued reliance on technical expertise residing in the United States, including IANA staff at USC/ISI.

*Comments:* Almost all commenters supported the creation of a new, private not-for-profit corporation to manage DNS. Many suggested that IANA should evolve into the new corporation. A small number of commenters asserted that the U.S. Government should continue to manage Internet names and addresses. Another small number of commenters suggested that DNS should be managed by international governmental institutions such as the United Nations or the International Telecommunications Union. Many commenters urged the U.S. Government to commit to a more aggressive timeline for the new corporation's assumption of management responsibility. Some commenters also suggested that the proposal to headquarter the new corporation in the United States represented an inappropriate attempt to impose U.S. law on the Internet as a whole.

*Response:* The U.S. Government is committed to a transition that will allow the private sector to take leadership for DNS management. Most commenters shared this goal. While international organizations may provide specific expertise or act as advisors to the new corporation, the U.S. continues to believe, as do most commenters, that neither national governments acting as sovereigns nor intergovernmental organizations acting as representatives of governments should participate in management of Internet names and addresses. Of course, national governments now have, and will continue to have, authority to manage or establish policy for their own ccTLDs.

The U.S. Government would prefer that this transition be complete before the year 2000. To the extent that the new corporation is established and operationally stable, September 30, 2000 is intended to be, and remains, an "outside" date.

IANA has functioned as a government contractor, albeit with considerable latitude, for some time now. Moreover, IANA is not formally organized or constituted. It describes a function more than an entity, and as such does not currently provide a legal foundation for the new corporation. This is not to say,

however, that IANA could not be reconstituted by a broad-based, representative group of Internet stakeholders or that individuals associated with IANA should not themselves play important foundation roles in the formation of the new corporation. We believe, and many commenters also suggested, that the private sector organizers will want Dr. Postel and other IANA staff to be involved in the creation of the new corporation.

Because of the significant U.S.-based DNS expertise and in order to preserve stability, it makes sense to headquarter the new corporation in the United States. Further, the mere fact that the new corporation would be incorporated in the United States would not remove it from the jurisdiction of other nations. Finally, we note that the new corporation must be headquartered somewhere, and similar objections would inevitably arise if it were incorporated in another location.

#### 5. Structure of the New Corporation

The Green Paper proposed a 15-member Board, consisting of three representatives of regional number registries, two members designated by the Internet Architecture Board (IAB), two members representing domain name registries and domain name registrars, seven members representing Internet users, and the Chief Executive Officer of the new corporation.

*Comments:* Commenters expressed a variety of positions on the composition of the Board of Directors for the new corporation. In general, however, most commenters supported the establishment of a Board of Directors that would be representative of the functional and geographic diversity of the Internet. For the most part, commenters agreed that the groups listed in the Green Paper included individuals and entities likely to be materially affected by changes in DNS. Most of those who criticized the proposed allocation of Board seats called for increased representation of their particular interest group on the Board of Directors. Specifically, a number of commenters suggested that the allocation set forth in the Green Paper did not adequately reflect the special interests of (1) trademark holders, (2) Internet service providers, or (3) the not-for-profit community. Others commented that the Green Paper did not adequately ensure that the Board would be globally representative.

*Response:* The Green Paper attempted to describe a manageably sized Board of Directors that reflected the diversity of the Internet. It is probably impossible to

allocate Board seats in a way that satisfies all parties concerned. On balance, we believe the concerns raised about the representation of specific groups are best addressed by a thoughtful allocation of the "user" seats as determined by the organizers of the new corporation and its Board of Directors, as discussed below.

The Green Paper identified several international membership associations and organizations to designate Board members such as APNIC, ARIN, RIPE, and the Internet Architecture Board. We continue to believe that as use of the Internet expands outside the United States, it is increasingly likely that a properly open and transparent DNS management entity will have board members from around the world. Although we do not set any mandatory minimums for global representation, this policy statement is designed to identify global representativeness as an important priority.

#### 6. Registrars and Registries

The Green Paper proposed moving the system for registering second level domains and the management of generic top-level domains into a competitive environment by creating two market-driven businesses, registration of second level domain names and the management of gTLD registries.

##### a. Competitive Registrars

*Comments:* Commenters strongly supported establishment of a competitive registrar system whereby registrars would obtain domain names for customers in any gTLD. Few disagreed with this position. The Green Paper proposed a set of requirements to be imposed by the new corporation on all would-be registrars. Commenters for the most part did not take exception to the proposed criteria, but a number of commenters suggested that it was inappropriate for the United States government to establish them.

*Response:* In response to the comments received, the U.S. Government believes that the new corporation, rather than the U.S. Government, should establish minimum criteria for registrars that are pro-competitive and provide some measure of stability for Internet users without being so onerous as to prevent entry by would-be domain name registrars from around the world. Accordingly, the proposed criteria are not part of this policy statement.

##### b. Competitive Registries

*Comments:* Many commenters voiced strong opposition to the idea of competitive and/or for-profit domain

name registries, citing one of several concerns. Some suggested that top level domain names are not, by nature, ever truly generic. As such, they will tend to function as "natural monopolies" and should be regulated as a public trust and operated for the benefit of the Internet community as a whole. Others suggested that even if competition initially exists among various domain name registries, lack of portability in the naming systems would create lock-in and switching costs, making competition unsustainable in the long run. Finally, other commenters suggested that no new registry could compete meaningfully with NSI unless all domain name registries were not-for-profit and/or noncompeting.

Some commenters asserted that an experiment involving the creation of additional for-profit registries would be too risky, and irreversible once undertaken. A related concern raised by commenters addressed the rights that for-profit operators might assert with respect to the information contained in registries they operate. These commenters argued that registries would have inadequate incentives to abide by DNS policies and procedures unless the new corporation could terminate a particular entity's license to operate a registry. For-profit operators, under this line of reasoning, would be more likely to disrupt the Internet by resisting license terminations.

Commenters who supported competitive registries conceded that, in the absence of domain name portability, domain name registries could impose switching costs on users who change domain name registries. They cautioned, however, that it would be premature to conclude that switching costs provide a sufficient basis for precluding the proposed move to competitive domain name registries and cited a number of factors that could protect against registry opportunism. These commenters concluded that the potential benefits to customers from enhanced competition outweighed the risk of such opportunism. The responses to the Green Paper also included public comments on the proposed criteria for registries.

*Response:* Both sides of this argument have considerable merit. It is possible that additional discussion and information will shed light on this issue, and therefore, as discussed below, the U.S. Government has concluded that the issue should be left for further consideration and final action by the new corporation. The U.S. Government is of the view, however, that competitive systems generally result in greater innovation, consumer choice,

and satisfaction in the long run. Moreover, the pressure of competition is likely to be the most effective means of discouraging registries from acting monopolistically. Further, in response to the comments received, the U.S. government believes that new corporation should establish and implement appropriate criteria for gTLD registries. Accordingly, the proposed criteria are not part of this policy statement.

#### 7. The Creation of New gTLDs

The Green Paper suggested that during the period of transition to the new corporation, the U.S. Government, in cooperation with IANA, would undertake a process to add up to five new gTLDs to the authoritative root. Noting that formation of the new corporation would involve some delay, the Green Paper contemplated new gTLDs in the short term to enhance competition and provide information to the technical community and to policy makers, while offering entities that wished to enter into the registry business an opportunity to begin offering service to customers. The Green Paper, however, noted that ideally the addition of new TLDs would be left to the new corporation.

*Comments:* The comments evidenced very strong support for limiting government involvement during the transition period on the matter of adding new gTLDs. Specifically, most commenters—both U.S. and non-U.S.—suggested that it would be more appropriate for the new, globally representative, corporation to decide these issues once it is up and running. Few believed that speed should outweigh process considerations in this matter. Others warned, however, that relegating this contentious decision to a new and untested entity early in its development could fracture the organization. Others argued that the market for a large or unlimited number of new gTLDs should be opened immediately. They asserted that there are no technical impediments to the addition of a host of gTLDs, and the market will decide which TLDs succeed and which do not. Further, they pointed out that there are no artificial or arbitrary limits in other media on the number of places in which trademark holders must defend against dilution.

*Response:* The challenge of deciding policy for the addition of new domains will be formidable. We agree with the many commenters who said that the new corporation would be the most appropriate body to make these decisions based on global input. Accordingly, as supported by the

preponderance of comments, the U.S. Government will not implement new gTLDs at this time.

At least in the short run, a prudent concern for the stability of the system suggests that expansion of gTLDs proceed at a deliberate and controlled pace to allow for evaluation of the impact of the new gTLDs and well-reasoned evolution of the domain space. New top level domains could be created to enhance competition and to enable the new corporation to evaluate the functioning, in the new environment, of the root server system and the software systems that enable shared registration.

#### 8. The Trademark Dilemma

When a trademark is used as a domain name without the trademark owner's consent, consumers may be misled about the source of the product or service offered on the Internet, and trademark owners may not be able to protect their rights without very expensive litigation. For cyberspace to function as an effective commercial market, businesses must have confidence that their trademarks can be protected. On the other hand, management of the Internet must respond to the needs of the Internet community as a whole, and not trademark owners exclusively. The Green Paper proposed a number of steps to balance the needs of domain name holders with the legitimate concerns of trademark owners in the interest of the Internet community as a whole. The proposals were designed to provide trademark holders with the same rights they have in the physical world, to ensure transparency, and to guarantee a dispute resolution mechanism with resort to a court system.

The Green Paper also noted that trademark holders have expressed concern that domain name registrants in faraway places may be able to infringe their rights with no convenient jurisdiction available in which the trademark owner could enforce a judgment protecting those rights. The Green Paper solicited comments on an arrangement whereby, at the time of registration, registrants would agree to submit a contested domain name to the jurisdiction of the courts where the registry is domiciled, where the registry database is maintained, or where the "A" root server is maintained.

*Comments:* Commenters largely agreed that domain name registries should maintain up-to-date, readily searchable domain name databases that contain the information necessary to locate a domain name holder. In general commenters did not take specific issue with the database specifications

proposed in Appendix 2 of the Green Paper, although some commenters proposed additional requirements. A few commenters noted, however, that privacy issues should be considered in this context.

A number of commenters objected to NSI's current business practice of allowing registrants to use domain names before they have actually paid any registration fees. These commenters pointed out that this practice has encouraged cybersquatters and increased the number of conflicts between domain name holders and trademark holders. They suggested that domain name applicants should be required to pay before a desired domain name becomes available for use.

Most commenters also favored creation of an on-line dispute resolution mechanism to provide inexpensive and efficient alternatives to litigation for resolving disputes between trademark owners and domain name registrants. The Green Paper contemplated that each registry would establish specified minimum dispute resolution procedures, but remain free to establish additional trademark protection and dispute resolution mechanisms. Most commenters did not agree with this approach, favoring instead a uniform approach to resolving trademark/domain name disputes.

Some commenters noted that temporary suspension of a domain name in the event of an objection by a trademark holder within a specified period of time after registration would significantly extend trademark holders' rights beyond what is accorded in the real world. They argued that such a provision would create a *de facto* waiting period for name use, as holders would need to suspend the use of their name until after the objection window had passed to forestall an interruption in service. Further, they argue that such a system could be used anti-competitively to stall a competitor's entry into the marketplace.

The suggestion that domain name registrants be required to agree at the time of registration to submit disputed domain names to the jurisdiction of specified courts was supported by U.S. trademark holders but drew strong protest from trademark holders and domain name registrants outside the United States. A number of commenters characterized this as an inappropriate attempt to establish U.S. trademark law as the law of the Internet. Others suggested that existing jurisdictional arrangements are satisfactory. They argue that establishing a mechanism whereby the judgment of a court can be enforced absent personal jurisdiction

over the infringer would upset the balance between the interests of trademark holders and those of other members of the Internet community.

*Response:* The U.S. Government will seek international support to call upon the World Intellectual Property Organization (WIPO) to initiate a balanced and transparent process, which includes the participation of trademark holders and members of the Internet community who are not trademark holders, to (1) develop recommendations for a uniform approach to resolving trademark/domain name disputes involving cybersquatting (as opposed to conflicts between trademark holders with legitimate competing rights), (2) recommend a process for protecting famous trademarks in the generic top level domains, and (3) evaluate the effects, based on studies conducted by independent organizations, such as the National Research Council of the National Academy of Sciences, of adding new gTLDs and related dispute resolution procedures on trademark and intellectual property holders. These findings and recommendations could be submitted to the board of the new corporation for its consideration in conjunction with its development of registry and registrar policy and the creation and introduction of new gTLDs.

In trademark/domain name conflicts, there are issues of jurisdiction over the domain name in controversy and jurisdiction over the legal persons (the trademark holder and the domain name holder). This document does not attempt to resolve questions of personal jurisdiction in trademark/domain name conflicts. The legal issues are numerous, involving contract, conflict of laws, trademark, and other questions. In addition, determining how these various legal principles will be applied to the borderless Internet with an unlimited possibility of factual scenarios will require a great deal of thought and deliberation. Obtaining agreement by the parties that jurisdiction over the domain name will be exercised by an alternative dispute resolution body is likely to be at least somewhat less controversial than agreement that the parties will subject themselves to the personal jurisdiction of a particular national court. Thus, the references to jurisdiction in this policy statement are limited to jurisdiction over the domain name in dispute, and not to the domain name holder.

In order to strike a balance between those commenters who thought that registrars and registries should not themselves be engaged in disputes between trademark owners and domain

name holders and those commenters who thought that trademark owners should have access to a reliable and up-to-date database, we believe that a database should be maintained that permits trademark owners to obtain the contact information necessary to protect their trademarks.

Further, it should be clear that whatever dispute resolution mechanism is put in place by the new corporation, that mechanism should be directed toward disputes about cybersquatting and cyberpiracy and not to settling the disputes between two parties with legitimate competing interests in a particular mark. Where legitimate competing rights are concerned, disputes are rightly settled in an appropriate court.

Under the revised plan, we recommend that domain name holders agree to submit infringing domain names to the jurisdiction of a court where the "A" root server is maintained, where the registry is domiciled, where the registry database is maintained, or where the registrar is domiciled. We believe that allowing trademark infringement suits to be brought wherever registrars and registries are located will help ensure that all trademark holders "both U.S. and non-U.S." have the opportunity to bring suits in a convenient jurisdiction and enforce the judgments of those courts.

Under the revised plan, we also recommend that, whatever options are chosen by the new corporation, each registrar should insist that payment be made for the domain name before it becomes available to the applicant. The failure to make a domain name applicant pay for its use of a domain name has encouraged cyberpirates and is a practice that should end as soon as possible.

#### 9. Competition Concerns

*Comments:* Several commenters suggested that the U.S. Government should provide full antitrust immunity or indemnification for the new corporation. Others noted that potential antitrust liability would provide an important safeguard against institutional inflexibility and abuses of power.

*Response:* Applicable antitrust law will provide accountability to and protection for the international Internet community. Legal challenges and lawsuits can be expected within the normal course of business for any enterprise and the new corporation should anticipate this reality.

The Green Paper envisioned the new corporation as operating on principles similar to those of a standard-setting

body. Under this model, due process requirements and other appropriate processes that ensure transparency, equity and fair play in the development of policies or practices would need to be included in the new corporation's originating documents. For example, the new corporation's activities would need to be open to all persons who are directly affected by the entity, with no undue financial barriers to participation or unreasonable restrictions on participation based on technical or other such requirements. Entities and individuals would need to be able to participate by expressing a position and its basis, having that position considered, and appealing if adversely affected. Further, the decision making process would need to reflect a balance of interests and should not be dominated by any single interest category. If the new corporation behaves this way, it should be less vulnerable to antitrust challenges.

#### 10. The NSI Agreement

*Comments:* Many commenters expressed concern about continued administration of key gTLDs by NSI. They argued that this would give NSI an unfair advantage in the marketplace and allow NSI to leverage economies of scale across their gTLD operations. Some commenters also believe the Green Paper approach would have entrenched and institutionalized NSI's dominant market position over the key domain name going forward. Further, many commenters expressed doubt that a level playing field between NSI and the new registry market entrants could emerge if NSI retained control over .com, .net, and .org.

*Response:* The cooperative agreement between NSI and the U.S. Government is currently in its ramp down period. The U.S. Government and NSI will shortly commence discussions about the terms and conditions governing the ramp-down of the cooperative agreement. Through these discussions, the U.S. Government expects NSI to agree to take specific actions, including commitments as to pricing and equal access, designed to permit the development of competition in domain name registration and to approximate what would be expected in the presence of marketplace competition. The U.S. Government expects NSI to agree to act in a manner consistent with this policy statement, including recognizing the role of the new corporation to establish and implement DNS policy and to establish terms (including licensing terms) applicable to new and existing gTLD registries under which registries, registrars and gTLDs are permitted to

operate. Further, the U.S. Government expects NSI to agree to make available on an ongoing basis appropriate databases, software, documentation thereof, technical expertise, and other intellectual property for DNS management and shared registration of domain names.

#### 11. A Global Perspective

*Comments:* A number of commenters expressed concern that the Green Paper did not go far enough in globalizing the administration of the domain name system. Some believed that international organizations should have a role in administering the DNS. Others complained that incorporating the new corporation in the United States would entrench control over the Internet with the U.S. Government. Still others believed that the awarding by the U.S. Government of up to five new gTLDs would enforce the existing dominance of U.S. entities over the gTLD system.

*Response:* The U.S. Government believes that the Internet is a global medium and that its technical management should fully reflect the global diversity of Internet users. We recognize the need for and fully support mechanisms that would ensure international input into the management of the domain name system. In withdrawing the U.S. Government from DNS management and promoting the establishment of a new, non-governmental entity to manage Internet names and addresses, a key U.S. Government objective has been to ensure that the increasingly global Internet user community has a voice in decisions affecting the Internet's technical management.

We believe this process has reflected our commitment. Many of the comments on the Green Paper were filed by foreign entities, including governments. Our dialogue has been open to all Internet users—foreign and domestic, government and private—during this process, and we will continue to consult with the international community as we begin to implement the transition plan outlined in this paper.

#### 12. The Intellectual Infrastructure Fund

In 1995, NSF authorized NSI to assess domain name registrants a \$50 fee per year for the first two years, 30 percent of which was to be deposited in the Intellectual Infrastructure Fund (IIF), a fund to be used for the preservation and enhancement of the intellectual infrastructure of the Internet.

*Comments:* Very few comments referenced the IIF. In general, the comments received on the issue

supported either refunding the IIF portion of the domain name registration fee to domain registrants from whom it had been collected or applying the funds toward Internet infrastructure development projects generally, including funding the establishment of the new corporation.

*Response:* As proposed in the Green Paper, allocation of a portion of domain name registration fees to this fund terminated as of March 31, 1998. NSI has reduced its registration fees accordingly. The IIF remains the subject of litigation. The U.S. Government takes the position that its collection has recently been ratified by the U.S. Congress,<sup>19</sup> and has moved to dismiss the claim that it was unlawfully collected. This matter has not been finally resolved, however.

#### 13. The .us Domain

At present, the IANA administers .us as a locality-based hierarchy in which second-level domain space is allocated to states and U.S. territories.<sup>20</sup> This name space is further subdivided into localities. General registration under localities is performed on an exclusive basis by private firms that have requested delegation from IANA. The .us name space has typically been used by branches of state and local governments, although some commercial names have been assigned. Where registration for a locality has not been delegated, the IANA itself serves as the registrar.

*Comments:* Many commenters suggested that the pressure for unique identifiers in the .com gTLD could be relieved if commercial use of the .us space was encouraged. Commercial users and trademark holders, however, find the current locality-based system too cumbersome and complicated for commercial use. They called for expanded use of the .us TLD to alleviate some of the pressure for new generic TLDs and reduce conflicts between American companies and others vying for the same domain name. Most commenters support an evolution of the .us domain designed to make this name space more attractive to commercial users.

*Response:* Clearly, there is much opportunity for enhancing the .us domain space, and .us could be expanded in many ways without displacing the current structure. Over the next few months, the U.S. Government will work with the private

sector and state and local governments to determine how best to make the .us domain more attractive to commercial users. Accordingly, the Department of Commerce will seek public input on this important issue.

#### Administrative Law Requirements

On February 20, 1998, NTIA published for public comment a proposed rule regarding the domain name registration system. That proposed rule sought comment on substantive regulatory provisions, including but not limited to a variety of specific requirements for the membership of the new corporation, the creation during a transition period of a specified number of new generic top level domains and minimum dispute resolution and other procedures related to trademarks. As discussed elsewhere in this document, in response to public comment these aspects of the original proposal have been eliminated. In light of the public comment and the changes to the proposal made as a result, as well as the continued rapid technological development of the Internet, the Department of Commerce has determined that it should issue a general statement of policy, rather than define or impose a substantive regulatory regime for the domain name system. As such, this policy statement is not a substantive rule, does not contain mandatory provisions and does not itself have the force and effect of law.

The Assistant General Counsel for Legislation and Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy, Small Business Administration, that, for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the proposed rule on this matter, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification was published along with the proposed rule. No comments were received regarding this certification. As such, and because this final rule is a general statement of policy, no final regulatory flexibility analysis has been prepared.

This general statement of policy does not contain any reporting or record keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. ch. 35 (PRA). However, at the time the U.S. Government might seek to enter into agreements as described in this policy statement, a determination will be made as to whether any reporting or record keeping requirements subject to the PRA are being implemented. If so, the NTIA will, at that time, seek approval under the PRA for such requirement(s) from the Office of Management and Budget.

<sup>19</sup> 1998 Supplemental Appropriations and Rescissions Act; Pub. L. 105-174; 112 Stat. 58.

<sup>20</sup> Management principles for the .us domain space are set forth in Internet RFC 1480. (<http://www.isi.edu/in-notes/rfc1480.txt>).

This statement has been determined to be not significant for purposes of Office of Management and Budget review under Executive Order 12866, entitled Regulatory Planning and Review.

#### Revised Policy Statement

This document provides the U.S. Government's policy regarding the privatization of the domain name system in a manner that allows for the development of robust competition and that facilitates global participation in the management of Internet names and addresses.

The policy that follows does not propose a monolithic structure for Internet governance. We doubt that the Internet should be governed by one plan or one body or even by a series of plans and bodies. Rather, we seek a stable process to address the narrow issues of management and administration of Internet names and numbers on an ongoing basis.

As set out below, the U.S. Government is prepared to recognize, by entering into agreement with, and to seek international support for, a new, not-for-profit corporation formed by private sector Internet stakeholders to administer policy for the Internet name and address system. Under such agreement(s) or understanding(s), the new corporation would undertake various responsibilities for the administration of the domain name system now performed by or on behalf of the U.S. Government or by third parties under arrangements or agreements with the U.S. Government. The U.S. Government would also ensure that the new corporation has appropriate access to needed databases and software developed under those agreements.

#### The Coordinated Functions

Management of number addresses is best done on a coordinated basis. Internet numbers are a unique, and at least currently, a limited resource. As technology evolves, changes may be needed in the number allocation system. These changes should also be coordinated.

Similarly, coordination of the root server network is necessary if the whole system is to work smoothly. While day-to-day operational tasks, such as the actual operation and maintenance of the Internet root servers, can be dispersed, overall policy guidance and control of the TLDs and the Internet root server system should be vested in a single organization that is representative of Internet users around the globe.

Further, changes made in the administration or the number of gTLDs contained in the authoritative root system will have considerable impact on Internet users throughout the world. In order to promote continuity and reasonable predictability in functions related to the root zone, the development of policies for the addition, allocation, and management of gTLDs and the establishment of domain name registries and domain name registrars to host gTLDs should be coordinated.

Finally, coordinated maintenance and dissemination of the protocol parameters for Internet addressing will best preserve the stability and interconnectivity of the Internet. We are not, however, proposing to expand the functional responsibilities of the new corporation beyond those exercised by IANA currently.

In order to facilitate the needed coordination, Internet stakeholders are invited to work together to form a new, private, not-for-profit corporation to manage DNS functions. The following discussion reflects current U.S. Government views of the characteristics of an appropriate management entity. What follows is designed to describe the characteristics of an appropriate entity generally.

#### Principles for a New System

In making a decision to enter into an agreement to establish a process to transfer current U.S. Government management of DNS to such a new entity, the U.S. will be guided by, and consider the proposed entity's commitment to, the following principles:

*1. Stability.* The U.S. Government should end its role in the Internet number and name address system in a manner that ensures the stability of the Internet. The introduction of a new management system should not disrupt current operations or create competing root systems. During the transition and thereafter, the stability of the Internet should be the first priority of any DNS management system. Security and reliability of the DNS are important aspects of stability, and as a new DNS management system is introduced, a comprehensive security strategy should be developed.

*2. Competition.* The Internet succeeds in great measure because it is a decentralized system that encourages innovation and maximizes individual freedom. Where possible, market mechanisms that support competition and consumer choice should drive the management of the Internet because they will lower costs, promote

innovation, encourage diversity, and enhance user choice and satisfaction.

*3. Private, Bottom-Up Coordination.* Certain management functions require coordination. In these cases, responsible, private-sector action is preferable to government control. A private coordinating process is likely to be more flexible than government and to move rapidly enough to meet the changing needs of the Internet and of Internet users. The private process should, as far as possible, reflect the bottom-up governance that has characterized development of the Internet to date.

*4. Representation.* The new corporation should operate as a private entity for the benefit of the Internet community as a whole. The development of sound, fair, and widely accepted policies for the management of DNS will depend on input from the broad and growing community of Internet users. Management structures should reflect the functional and geographic diversity of the Internet and its users. Mechanisms should be established to ensure international participation in decision making.

*Purpose.* The new corporation ultimately should have the authority to manage and perform a specific set of functions related to coordination of the domain name system, including the authority necessary to:

- (1) Set policy for and direct allocation of IP number blocks to regional Internet number registries;
- (2) Oversee operation of the authoritative Internet root server system;
- (3) Oversee policy for determining the circumstances under which new TLDs are added to the root system; and
- (4) Coordinate the assignment of other Internet technical parameters as needed to maintain universal connectivity on the Internet.

*Funding.* Once established, the new corporation could be funded by domain name registries, regional IP registries, or other entities identified by the Board.

*Staff.* We anticipate that the new corporation would want to make arrangements with current IANA staff to provide continuity and expertise over the course of transition. The new corporation should secure necessary expertise to bring rigorous management to the organization.

*Incorporation.* We anticipate that the new corporation's organizers will include representatives of regional Internet number registries, Internet engineers and computer scientists, domain name registries, domain name registrars, commercial and noncommercial users, Internet service providers, international trademark

holders and Internet experts highly respected throughout the international Internet community. These incorporators should include substantial representation from around the world.

As these functions are now performed in the United States, by U.S. residents, and to ensure stability, the new corporation should be headquartered in the United States, and incorporated in the U.S. as a not-for-profit corporation. It should, however, have a board of directors from around the world. Moreover, incorporation in the United States is not intended to supplant or displace the laws of other countries where applicable.

*Structure.* The Internet community is already global and diverse and likely to become more so over time. The organization and its board should derive legitimacy from the participation of key stakeholders. Since the organization will be concerned mainly with numbers, names and protocols, its board should represent membership organizations in each of these areas, as well as the direct interests of Internet users.

The Board of Directors for the new corporation should be balanced to equitably represent the interests of IP number registries, domain name registries, domain name registrars, the technical community, Internet service providers (ISPs), and Internet users (commercial, not-for-profit, and individuals) from around the world. Since these constituencies are international, we would expect the board of directors to be broadly representative of the global Internet community.

As outlined in appropriate organizational documents, (Charter, Bylaws, etc.) the new corporation should:

(1) Appoint, on an interim basis, an initial Board of Directors (an Interim Board) consisting of individuals representing the functional and geographic diversity of the Internet community. The Interim Board would likely need access to legal counsel with expertise in corporate law, competition law, intellectual property law, and emerging Internet law. The Interim Board could serve for a fixed period, until the Board of Directors is elected and installed, and we anticipate that members of the Interim Board would not themselves serve on the Board of Directors of the new corporation for a fixed period thereafter.

(2) Direct the Interim Board to establish a system for electing a Board of Directors for the new corporation that insures that the new corporation's Board of Directors reflects the geographical and functional diversity of the Internet,

and is sufficiently flexible to permit evolution to reflect changes in the constituency of Internet stakeholders. Nominations to the Board of Directors should preserve, as much as possible, the tradition of bottom-up governance of the Internet, and Board Members should be elected from membership or other associations open to all or through other mechanisms that ensure broad representation and participation in the election process.

(3) Direct the Interim Board to develop policies for the addition of TLDs, and establish the qualifications for domain name registries and domain name registrars within the system.

(4) Restrict official government representation on the Board of Directors without precluding governments and intergovernmental organizations from participating as Internet users or in a non-voting advisory capacity.

*Governance.* The organizing documents (Charter, Bylaws, etc.) should provide that the new corporation is governed on the basis of a sound and transparent decision-making process, which protects against capture by a self-interested faction, and which provides for robust, professional management of the new corporation. The new corporation could rely on separate, diverse, and robust name and number councils responsible for developing, reviewing, and recommending for the board's approval policy related to matters within each council's competence. Such councils, if developed, should also abide by rules and decision-making processes that are sound, transparent, protect against capture by a self-interested party and provide an open process for the presentation of petitions for consideration. The elected Board of Directors, however, should have final authority to approve or reject policies recommended by the councils.

*Operations.* The new corporation's processes should be fair, open and pro-competitive, protecting against capture by a narrow group of stakeholders. Typically this means that decision-making processes should be sound and transparent; the basis for corporate decisions should be recorded and made publicly available. Super-majority or even consensus requirements may be useful to protect against capture by a self-interested faction. The new corporation does not need any special grant of immunity from the antitrust laws so long as its policies and practices are reasonably based on, and no broader than necessary to promote the legitimate coordinating objectives of the new corporation. Finally, the commercial importance of the Internet necessitates

that the operation of the DNS system, and the operation of the authoritative root server system should be secure, stable, and robust.

The new corporation's charter should provide a mechanism whereby its governing body will evolve to reflect changes in the constituency of Internet stakeholders. The new corporation could, for example, establish an open process for the presentation of petitions to expand board representation.

*Trademark Issues.* Trademark holders and domain name registrants and others should have access to searchable databases of registered domain names that provide information necessary to contact a domain name registrant when a conflict arises between a trademark holder and a domain name holder.<sup>21</sup> To this end, we anticipate that the policies established by the new corporation would provide that following information would be included in all registry databases and available to anyone with access to the Internet:

- Up-to-date registration and contact information;
- Up-to-date and historical chain of registration information for the domain name;
- A mail address for service of process;
- The date of domain name registration;
- The date that any objection to the registration of the domain name is filed; and
- Any other information determined by the new corporation to be reasonably necessary to resolve disputes between domain name registrants and trademark holders expeditiously.

Further, the U.S. Government recommends that the new corporation adopt policies whereby:

(1) Domain registrants pay registration fees at the time of registration or renewal and agree to submit infringing domain names to the authority of a court of law in the jurisdiction in which the registry, registry database, registrar, or the "A" root servers are located.

(2) Domain name registrants would agree, at the time of registration or renewal, that in cases involving cybersquatting or cybersquatting (as opposed to conflicts between legitimate competing rights holders), they would submit to and be bound by alternative dispute resolution systems identified by the new corporation for the purpose of resolving those conflicts. Registries and Registrars should be required to abide by decisions of the ADR system.

<sup>21</sup> These databases would also benefit domain name holders by making it less expensive for new registrars and registries to identify potential customers, enhancing competition and lowering prices.

(3) Domain name registrants would agree, at the time of registration or renewal, to abide by processes adopted by the new corporation that exclude, either pro-actively or retroactively, certain famous trademarks from being used as domain names (in one or more TLDs) except by the designated trademark holder.

(4) Nothing in the domain name registration agreement or in the operation of the new corporation should limit the rights that can be asserted by a domain name registrant or trademark owner under national laws.

#### The Transition

Based on the processes described above, the U.S. Government believes that certain actions should be taken to accomplish the objectives set forth above. Some of these steps must be taken by the government itself, while others will need to be taken by the private sector. For example, a new not-for-profit organization must be established by the private sector and its Interim Board chosen. Agreement must be reached between the U.S. Government and the new corporation relating to transfer of the functions currently performed by IANA, NSI and the U.S. Government must reach agreement on the terms and conditions of NSI's evolution into one competitor among many in the registrar and registry marketplaces. A process must be laid out for making the management of the root server system more robust and secure. A relationship between the U.S. Government and the new corporation must be developed to transition DNS management to the private sector and to transfer management functions.

During the transition the U.S. Government expects to:

(1) Ramp down the cooperative agreement with NSI with the objective of introducing competition into the domain name space. Under the ramp down agreement NSI will agree to (a) take specific actions, including commitments as to pricing and equal access, designed to permit the development of competition in domain name registration and to approximate what would be expected in the presence of marketplace competition, (b) recognize the role of the new corporation to establish and implement DNS policy and to establish terms (including licensing terms) applicable to new and existing gTLDs and registries under which registries, registrars and gTLDs are permitted to operate, (c) make available on an ongoing basis appropriate databases, software, documentation thereof, technical expertise, and other intellectual

property for DNS management and shared registration of domain names;

(2) Enter into agreement with the new corporation under which it assumes responsibility for management of the domain name space;

(3) Ask WIPO to convene an international process including individuals from the private sector and government to develop a set of recommendations for trademark/domain name dispute resolutions and other issues to be presented to the Interim Board for its consideration as soon as possible;

(4) Consult with the international community, including other interested governments as it makes decisions on the transfer; and

(5) Undertake, in cooperation with IANA, NSI, the IAB, and other relevant organizations from the public and private sector, a review of the root server system to recommend means to increase the security and professional management of the system. The recommendations of the study should be implemented as part of the transition process; and the new corporation should develop a comprehensive security strategy for DNS management and operations.

Dated: June 4, 1998.

**William M. Daley,**

*Secretary of Commerce.*

[FR Doc. 98-15392 Filed 6-9-98; 8:45 am]

**BILLING CODE 3510-60-P**

## COMMISSION OF FINE ARTS

### Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for June 18, 1998 at 10:00 a.m. in the Commission's offices at the National Building Museum (Pension Building), Suite 312, Judiciary Square, 441 F Street, N.W., Washington, D.C. 20001. The meeting will focus on a variety of projects affecting the appearance of the city.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 202-504-2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, D.C., June 2, 1998.

**Charles H. Atherton,**

*Secretary.*

[FR Doc. 98-15372 Filed 6-9-98; 8:45 am]

**BILLING CODE 6330-01-M**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in the Philippines

June 5, 1998.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** June 10, 1998.

#### FOR FURTHER INFORMATION CONTACT:

Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

#### SUPPLEMENTARY INFORMATION:

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for special shift and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION:** Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 64361, published on December 5, 1997.

**Troy H. Cribb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

#### Committee for the Implementation of Textile Agreements

June 5, 1998.

Commissioner of Customs,  
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 1, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelve-

**R-33**

**RESPONDENT'S EXHIBIT**

# ICANN | GNSO

Generic Names Supporting Organization

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TRANSLATE

To translate any GNSO document (PDF, DOC, etc.), use [Google Translate](#).

**Final Report - Introduction of New Generic Top-Level Domains**
Last Updated: 4 September 2009

Date: 8 August 2007

**ICANN Generic Names Supporting Organisation**  
**Final Report**  
**Introduction of New Generic Top-Level Domains**  
**8 August 2007**  
**Part A: Final Report**  
**Introduction of New Generic Top-Level Domains**

ABSTRACT

BACKGROUND

SUMMARY -- PRINCIPLES, RECOMMENDATIONS & IMPLEMENTATION GUIDELINES

TERM OF REFERENCE ONE -- WHETHER TO INTRODUCE NEW TOP-LEVEL DOMAINS

TERM OF REFERENCE -- SELECTION CRITERIA

TERM OF REFERENCE THREE -- ALLOCATION METHODS

TERM OF REFERENCE FOUR -- CONTRACTUAL CONDITIONS

NEXT STEPS

Annex A – NCUC Minority Statement: Recommendation 6

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Annex C – NCUC Minority Statement: Recommendation 20 and Implementation Guidelines F, H & P

REFERENCE MATERIAL -- GLOSSARY

**FINAL REPORT: PART B**

**ABSTRACT**

This is the Generic Names Supporting Organization's Final Report on the Introduction of New Top-Level Domains. The Report is in two parts. Part A contains the substantive discussion of the Principles, Policy Recommendations and Implementation Guidelines and Part B contains a range of supplementary materials that have been used by the Committee during the course of the Policy Development Process.

The GNSO Committee on New Top-Level Domains consisted of all GNSO Council members. All meetings were open to a wide range of interested stakeholders and observers. A set of participation data is found in Part B.

Many of the terms found here have specific meaning within the context of ICANN and new top-level domains discussion. A full glossary of terms is available in the Reference Material section at the end of Part A.

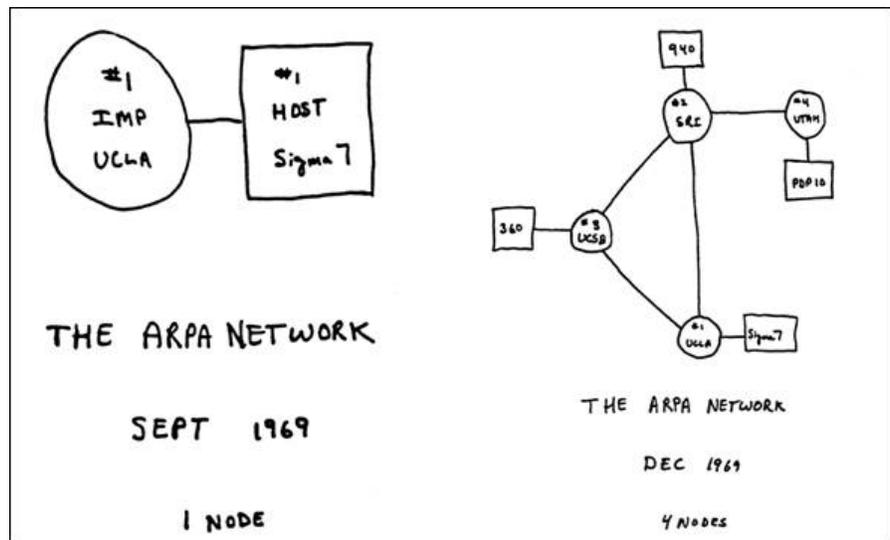
**BACKGROUND**

1. The Internet Corporation for Assigned Names and Numbers (ICANN) is responsible for the overall coordination of "the global Internet's system of unique identifiers" and ensuring the "stable and secure operation of the Internet's unique identifier systems. In particular, ICANN coordinates the "allocation and assignment of the three sets of unique identifiers for the Internet". These are "domain names"(forming a system called the DNS); Internet protocol (IP) addresses and autonomous system (AS) numbers and Protocol port and parameter numbers". ICANN is also responsible for the "operation and evolution of the DNS root name server system and policy development reasonably and appropriately related to these technical functions". These elements are all contained in ICANN's Mission and Core Values[1] in addition to provisions which enable policy development work that, once approved by the ICANN Board, become binding on the organization. The results of the policy development process found here relate to the introduction of new generic top-level domains.
2. This document is the *Final Report* of the Generic Names Supporting Organisation's (GNSO) Policy Development Process

(PDP) that has been conducted using ICANN's Bylaws and policy development guidelines that relate to the work of the GNSO. This *Report* reflects a comprehensive examination of four Terms of Reference designed to establish a stable and ongoing process that facilitates the introduction of new top-level domains. The policy development process (PDP) is part of the Generic Names Supporting Organisation's (GNSO) mandate within the ICANN structure. However, close consultation with other ICANN Supporting Organisations and Advisory Committees has been an integral part of the process. The consultations and negotiations have also included a wide range of interested stakeholders from within and outside the ICANN community[2].

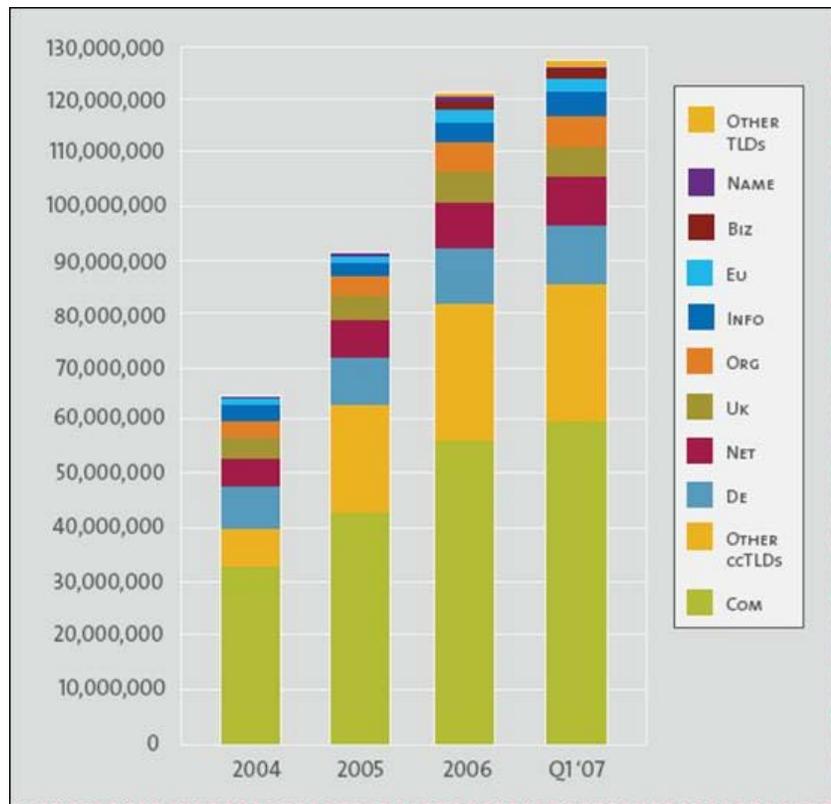
3. The *Final Report* is in two parts. This document is Part A and contains the full explanation of each of the Principles, Recommendations and Implementation Guidelines that the Committee has developed since December 2005[3]. Part B of the *Report* contains a wide range of supplementary materials which have been used in the policy development process including Constituency Impact Statements (CIS), a series of Working Group Reports on important sub-elements of the Committee's deliberations, a collection of external reference materials, and the procedural documentation of the policy development process[4].

4. The finalisation of the policy for the introduction of new top-level domains is part of a long series of events that have dramatically changed the nature of the Internet. The 1969 ARPANET diagram shows the initial design of a network that is now global in its reach and an integral part of many lives and businesses. The policy recommendations found here illustrate the complexity of the Internet of 2007 and, as a package, propose a system to add new top-level domains in an orderly and transparent way. The ICANN Staff Implementation Team, consisting of policy, operational and legal staff members, has worked closely with the Committee on all aspects of the policy development process[5]. The ICANN Board has received regular information and updates about the process and the substantive results of the Committee's work.



5. The majority of the early work on the introduction of new top-level domains is found in the IETF's Request for Comment series. RFC 1034[6] is a fundamental resource that explains key concepts of the naming system. Read in conjunction with RFC920[7], an historical picture emerges of how and why the domain name system hierarchy has been organised. Postel & Reynolds set out in their RFC920 introduction about the "General Purpose Domains" that "...While the initial domain name "ARPA" arises from the history of the development of this system and environment, in the future most of the top level names will be very general categories like "government", "education", or "commercial". The motivation is to provide an organization name that is free of undesirable semantics."

6. In 2007, the Internet is multi-dimensional and its development is driven by widespread access to inexpensive communications technologies in many parts of the world. In addition, global travel is now relatively inexpensive, efficient and readily available to a diverse range of travellers. As a consequence, citizens no longer automatically associate themselves with countries but with international communities of linguistic, cultural or professional interests independent of physical location. Many people now exercise multiple citizenship rights, speak many different languages and quite often live far from where they were born or educated. The 2007 OECD *Factbook*[8] provides comprehensive statistics about the impact of migration on OECD member countries. In essence, many populations are fluid and changing due in part to easing labour movement restrictions but also because technology enables workers to live in one place and work in another relatively easily. As a result, companies and organizations are now global and operate across many geographic borders and jurisdictions. The following illustration[9] shows how rapidly the number of domain names under registration has increased and one could expect that trend to continue with the introduction of new top-level domains.



7. A key driver of change has been the introduction of competition in the registration of domain names through ICANN Accredited Registrars[10]. In June 2007, there were more than 800 accredited registrars who register names for end users with ongoing downward pressure on the prices end-users pay for domain name registration.

8. ICANN's work on the introduction of new top-level domains has been underway since 1999. By mid-1999, Working Group C[11] had quickly reached consensus on two issues, namely that "...ICANN should add new gTLDs to the root. The second is that ICANN should begin the deployment of new gTLDs with an initial rollout of six to ten new gTLDs, followed by an evaluation period". This work was undertaken throughout 2000 and saw the introduction of, for example, .coop, .aero and .biz.

9. After an evaluation period, a further round of sponsored TLDs was introduced during 2003 and 2004 which included, amongst others, .mobi and .travel[12].

10. The July 2007 zone file survey statistics from [www.registrarstats.com](http://www.registrarstats.com)[13] shows that there are slightly more than 96,000,000 top level domains registered across a selection of seven top-level domains including .com, .net and .info. Evidence from potential new applicants provides more impetus to implement a system that enables the ongoing introduction of new top level domains[14]. In addition, interest from Internet users who could use Internationalised Domain Names (IDNs) in a wide variety of scripts beyond ASCII is growing rapidly.

11. To arrive at the full set of policy recommendations which are found here, the Committee considered the responses to a Call for Expert Papers issued at the beginning of the policy development process[15], and which was augmented by a full set of GNSO Constituency Statements[16]. These are all found in Part B of the *Final Report* and should be read in conjunction with this document. In addition, the Committee received detailed responses from the Implementation Team about proposed policy recommendations and the implementation of the recommendations package as an on-line application process that could be used by a wide array of potential applicants.

12. The Committee reviewed and analysed a wide variety of materials including Working Group C's findings, the evaluation reports from the 2003 & 2004 round of sponsored top-level domains and a full range of other historic materials[17].

13. In the past, a number of different approaches to new top level domains have been considered including the formulation of a structured taxonomy[18] of names, for example, .auto, .books, .travel and .music. The Committee has opted to enable potential applicants to self-select strings that are either the most appropriate for their customers or potentially the most marketable. It is expected that applicants will apply for targeted community strings such as .travel for the travel industry and .cat for the Catalan community as well as some generic strings. The Committee identified five key drivers for the introduction of new top-level domains.

- (i) It is consistent with the reasons articulated in 1999 when the first proof-of-concept round was initiated
- (ii) There are no technical impediments to the introduction of new top-level domains as evidenced by the two previous rounds
- (iii) Expanding the domain name space to accommodate the introduction of both new ASCII and internationalised domain name (IDN) top-level domains will give end users more choice about the nature of their presence on the

Internet. In addition, users will be able to use domain names in their language of choice.

(iv) There is demand for additional top-level domains as a business opportunity. The GNSO Committee expects that this business opportunity will stimulate competition at the registry service level which is consistent with ICANN's Core Value 6.

(v) No compelling reason has been articulated to not proceed with accepting applications for new top-level domains.

14. The remainder of this Report is structured around the four *Terms of Reference*. This includes an explanation of the Principles that have guided the work taking into account the Governmental Advisory Committee's March 2007 *Public Policy Principles for New gTLDs*[19]; a comprehensive set of Recommendations which has majority Committee support and a set of Implementation Guidelines which has been discussed in great detail with the ICANN Staff Implementation Team. The Implementation Team has released two *ICANN Staff Discussion Points* documents (in November 2006 and June 2007). Version 2 provides detailed analysis of the proposed recommendations from an implementation standpoint and provides suggestions about the way in which the implementation plan may come together. The ICANN Board will make the final decision about the actual structure of the application and evaluation process.

15. In each of the sections below the Committee's recommendations are discussed in more detail with an explanation of the rationale for the decisions. The recommendations have been the subject of numerous public comment periods and intensive discussion across a range of stakeholders including ICANN's GNSO Constituencies, ICANN Supporting Organisations and Advisory Committees and members of the broader Internet-using public that is interested in ICANN's work[20]. In particular, detailed work has been conducted through the Internationalised Domain Names Working Group (IDN-WG)[21], the Reserved Names Working Group (RN-WG)[22] and the Protecting the Rights of Others Working Group (PRO-WG) [23]. The Working Group Reports are found in full in Part B of the *Final Report* along with the March 2007 GAC Public Policy Principles for New Top-Level Domains, Constituency Impact Statements. A minority statement from the NCUC about Recommendations 6 & 20 are found Annexes for this document along with individual comments from Nominating Committee appointee Ms Avri Doria.

**SUMMARY -- PRINCIPLES, RECOMMENDATIONS & IMPLEMENTATION GUIDELINES**

1. This section sets out, in table form, the set of Principles, proposed Policy Recommendations and Guidelines that the Committee has derived through its work. The addition of new gTLDs will be done in accordance with ICANN's primary mission which is to ensure the security and stability of the DNS and, in particular, the Internet's root server system[24].
2. The Principles are a combination of GNSO Committee priorities, ICANN staff implementation principles developed in tandem with the Committee and the March 2007 GAC Public Policy Principles on New Top-Level Domains. The Principles are supported by all GNSO Constituencies.[25]
3. ICANN's Mission and Core Values were key reference points for the development of the Committee's Principles, Recommendations and Implementation Guidelines. These are referenced in the right-hand column of the tables below.
4. The Principles have support from all GNSO Constituencies.

	PRINCIPLES	MISSION & CORE VALUES
<b>A</b>	<b>New generic top-level domains (gTLDs) must be introduced in an orderly, timely and predictable way.</b>	<b>M1 &amp; CV1 &amp; 2, 4-10</b>
<b>B</b>	Some new generic top-level domains should be internationalised domain names (IDNs) subject to the approval of IDNs being available in the root.	M1-3 & CV 1, 4 & 6
<b>C</b>	The reasons for introducing new top-level domains include that there is demand from potential applicants for new top-level domains in both ASCII and IDN formats. In addition the introduction of new top-level domain application process has the potential to promote competition in the provision of registry services, to add to consumer choice, market differentiation and geographical and service-provider diversity.	M3 & CV 4-10
<b>D</b>	A set of technical criteria must be used for assessing a new gTLD registry applicant to minimise the risk of harming the operational stability, security and global interoperability of the Internet.	M1-3 & CV 1
<b>E</b>	A set of capability criteria for a new gTLD registry applicant must be used to provide an assurance that an applicant has the capability to meet its obligations under the terms of ICANN's registry agreement.	M1-3 & CV 1
<b>F</b>	<b>A set of operational criteria must be set out in contractual conditions in the registry agreement to ensure compliance with ICANN policies.</b>	<b>M1-3 &amp; CV 1</b>
<b>G</b>	<b>The string evaluation process must not infringe the applicant's freedom of expression rights that are protected under internationally recognized principles of law.</b>	

	RECOMMENDATIONS[26]	MISSION & CORE VALUES
<b>1</b>	<b>ICANN must implement a process that allows the introduction of new</b>	<b>M1-3 &amp; CV1-11</b>

	<p>top-level domains.</p> <p>The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination.</p> <p>All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process.</p>	
2	Strings must not be confusingly similar to an existing top-level domain or a Reserved Name.	M1-3 & C1-6-11
3	<p>Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law.</p> <p>Examples of these legal rights that are internationally recognized include, but are not limited to, rights defined in the Paris Convention for the Protection of Industry Property (in particular trademark rights), the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) (in particular freedom of expression rights).</p>	CV3
4	Strings must not cause any technical instability.	M1-3 & CV 1
5	Strings must not be a Reserved Word[27].	M1-3 & CV 1 & 3
6*	<p>Strings must not be contrary to generally accepted legal norms relating to morality and public order that are recognized under international principles of law.</p> <p>Examples of such principles of law include, but are not limited to, the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the International Convention on the Elimination of All Forms of Racial Discrimination, intellectual property treaties administered by the World Intellectual Property Organisation (WIPO) and the WTO Agreement on Trade-Related Aspects of Intellectual Property (TRIPS).</p>	M3 & CV 4
7	Applicants must be able to demonstrate their technical capability to run a registry operation for the purpose that the applicant sets out.	M1-3 & CV1
8	Applicants must be able to demonstrate their financial and organisational operational capability.	M1-3 & CV1
9	There must be a clear and pre-published application process using objective and measurable criteria.	M3 & CV6-9
10	There must be a base contract provided to applicants at the beginning of the application process.	CV7-9
11	[Replaced with Recommendation 20 and Implementation Guideline P and inserted into Term of Reference 3 Allocation Methods section]	
12	Dispute resolution and challenge processes must be established prior to the start of the process.	CV7-9
13	Applications must initially be assessed in rounds until the scale of demand is clear.	CV7-9
14	The initial registry agreement term must be of a commercially reasonable length.	CV5-9
15	There must be renewal expectancy.	CV5-9
16	Registries must apply existing Consensus Policies and adopt new Consensus Policies as they are approved.	CV5-9
17	A clear compliance and sanctions process must be set out in the base contract which could lead to contract termination.	M1 & CV1
18	If an applicant offers an IDN service, then ICANN's IDN guidelines[28] must be followed.	M1 & CV1
19	Registries must use only ICANN accredited registrars in registering domain names and may not discriminate among such accredited registrars.	M1 & CV1

20*	An application will be rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be explicitly or implicitly targeted.	
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\* The NCUC submitted Minority Statements on Recommendations 6 and 20. The remainder of the Recommendations have support from all GNSO Constituencies.

	IMPLEMENTATION GUIDELINES	MISSION & CORE VALUES
IG A	The application process will provide a pre-defined roadmap for applicants that encourages the submission of applications for new top-level domains.	CV 2, 5, 6, 8 & 9
IG B	Application fees will be designed to ensure that adequate resources exist to cover the total cost to administer the new gTLD process.  Application fees may differ for applicants.	CV 5, 6, 8 & 9
IG C	ICANN will provide frequent communications with applicants and the public including comment forums.	CV 9 & 10
IG D	A first come first served processing schedule within the application round will be implemented and will continue for an ongoing process, if necessary.  Applications will be time and date stamped on receipt.	CV 8-10
IG E	The application submission date will be at least four months after the issue of the Request for Proposal and ICANN will promote the opening of the application round.	CV 9 & 10
IG F*	<b>If there is contention for strings, applicants may[29]:</b>  <b>i) resolve contention between them within a pre-established timeframe</b>  <b>ii) if there is no mutual agreement, a claim to support a community by one party will be a reason to award priority to that application. If there is no such claim, and no mutual agreement a process will be put in place to enable efficient resolution of contention and;</b>  <b>iii) the ICANN Board may be used to make a final decision, using advice from staff and expert panels.</b>	CV 7-10
IG H*	Where an applicant lays any claim that the TLD is intended to support a particular community such as a sponsored TLD, or any other TLD intended for a specified community, that claim will be taken on trust with the following exceptions:  (i) the claim relates to a string that is also subject to another application and the claim to support a community is being used to gain priority for the application; and  (ii) a formal objection process is initiated.  Under these exceptions, Staff Evaluators will devise criteria and procedures to investigate the claim.  Under exception (ii), an expert panel will apply the process, guidelines, and definitions set forth in IG P.	CV 7 - 10
IG H	External dispute providers will give decisions on objections.	CV 10
IG I	An applicant granted a TLD string must use it within a fixed timeframe which will be specified in the application process.	CV 10
IG J	The base contract should balance market certainty and flexibility for ICANN to accommodate a rapidly changing market place.	CV 4-10
IG K	ICANN should take a consistent approach to the establishment of registry fees.	CV 5
IG L	The use of personal data must be limited to the purpose for which it is collected.	CV 8
IG M	ICANN may establish a capacity building and support mechanism aiming at facilitating effective communication on important and technical Internet governance functions in a way that no longer requires all participants in the conversation to be able to read and write English[30].	CV 3 - 7
IG N	ICANN may put in place a fee reduction scheme for gTLD applicants from economies classified by the UN as least developed.	CV 3 - 7
IG O	ICANN may put in place systems that could provide information about the gTLD process in major languages other than English, for example, in the six working languages of the United Nations.	CV 8 -10

<p>IG P*</p>	<p>The following process, definitions and guidelines refer to Recommendation 20.</p> <p><b>Process</b></p> <p>Opposition must be objection based.</p> <p>Determination will be made by a dispute resolution panel constituted for the purpose.</p> <p>The objector must provide verifiable evidence that it is an established institution of the community (perhaps like the RSTEP pool of panelists from which a small panel would be constituted for each objection).</p> <p><b>Guidelines</b></p> <p>The task of the panel is the determination of substantial opposition.</p> <ul style="list-style-type: none"> <li>a) <b>substantial</b> – in determining substantial the panel will assess the following: signification portion, community, explicitly targeting, implicitly targeting, established institution, formal existence, detriment</li> <li>b) <b>significant portion</b> – in determining significant portion the panel will assess the balance between the level of objection submitted by one or more established institutions and the level of support provided in the application from one or more established institutions. The panel will assess significance proportionate to the explicit or implicit targeting.</li> <li>c) <b>community</b> – community should be interpreted broadly and will include, for example, an economic sector, a cultural community, or a linguistic community. It may be a closely related community which believes it is impacted.</li> <li>d) <b>explicitly targeting</b> – explicitly targeting means there is a description of the intended use of the TLD in the application.</li> <li>e) <b>implicitly targeting</b> – implicitly targeting means that the objector makes an assumption of targeting or that the objector believes there may be confusion by users over its intended use.</li> <li>f) <b>established institution</b> – an institution that has been in formal existence for at least 5 years. In exceptional cases, standing may be granted to an institution that has been in existence for fewer than 5 years.</li> </ul> <p>Exceptional circumstances include but are not limited to a re-organization, merger or an inherently younger community.</p> <p>The following ICANN organizations are defined as established institutions: GAC, ALAC, GNSO, ccNSO, ASO.</p> <ul style="list-style-type: none"> <li>g) <b>formal existence</b> – formal existence may be demonstrated by appropriate public registration, public historical evidence, validation by a government, intergovernmental organization, international treaty organization or similar.</li> <li>h) <b>detriment</b> – the objector must provide sufficient evidence to allow the panel to determine that there would be a likelihood of detriment to the rights or legitimate interests of the community or to users more widely.</li> </ul>	
<p>IG Q</p>	<p>ICANN staff will provide an automatic reply to all those who submit public comments that will explain the objection procedure.</p>	
<p>IG R</p>	<p>Once formal objections or disputes are accepted for review there will be a cooling off period to allow parties to resolve the dispute or objection before review by the panel is initiated.</p>	

\* The NCUC submitted Minority Statements on Implementation Guidelines F, H & P. The remainder of the Implementation Guidelines have support from all GNSO Constituencies.

1. This set of implementation guidelines is the result of detailed discussion, particularly with respect to the two *ICANN Staff Discussion Points*<sup>[31]</sup> documents that were prepared to facilitate consultation with the GNSO Committee about the implementation impacts of the proposed policy Recommendations. The Implementation Guidelines will be used to inform the final Implementation Plan which is approved by the ICANN Board

2. The *Discussion Points* documents contain draft flowcharts which have been developed by the Implementation Team and which will be updated, based on the final vote of the GNSO Council and the direction of the ICANN Board. The *Discussion Points* documents have been used in the ongoing internal implementation discussions that have focused on ensuring that draft recommendations proposed by the Committee are implementable in an efficient and transparent manner[32]. The flowchart setting out the proposed Contention Evaluation Process is a more detailed component within the Application Evaluation Process and will be amended to take into account the inputs from Recommendation 20 and its related Implementation Guidelines.

3. This policy development process has been designed to produce a systemised and ongoing mechanism for applicants to propose new top-level domains. The Request for Proposals (RFP) for the first round will include scheduling information for the subsequent rounds to occur within one year. After the first round of new applications, the application system will be evaluated by ICANN's TLDs Project Office to assess the effectiveness of the application system. Success metrics will be developed and any necessary adjustments made to the process for subsequent rounds.

4. The following sections set out in detail the explanation for the Committee's recommendations for each Term of Reference.

#### **TERM OF REFERENCE ONE -- WHETHER TO INTRODUCE NEW TOP-LEVEL DOMAINS**

##### **1. Recommendation 1 Discussion – All GNSO Constituencies supported the introduction of new top-level domains.**

2. The GNSO Committee was asked to address the question of whether to introduce new top-level domains. The Committee recommends that ICANN should implement a process that allows the introduction of new top level domains and that work should proceed to develop policies that will enable the introduction of new generic top-level domains, taking into account the recommendations found in the latter sections of the *Report* concerning Selection Criteria (Term of Reference 2), Allocation Methods (Term of Reference 3) and Policies for Contractual Conditions (Term of Reference 4).

3. ICANN's work on the introduction of new top-level domains has been ongoing since 1999. The early work included the 2000 Working Group C Report[33] that also asked the question of "whether there should be new TLDs". By mid-1999, the Working Group had quickly reached consensus on two issues, namely that "...ICANN should add new gTLDs to the root. The second is that ICANN should begin the deployment of new gTLDs with an initial rollout of six to ten new gTLDs, followed by an evaluation period". This work was undertaken throughout 2000 and saw the introduction of, for example, .coop, .aero and .biz.

4. After an evaluation period, a further round of sponsored TLDs was introduced during 2003 and 2004 which included, amongst others, .mobi and .travel.

5. In addressing Term of Reference One, the Committee arrived at its recommendation by reviewing and analysing a wide variety of materials including Working Group C's findings; the evaluation reports from the 2003-2004 round of sponsored top-level domains and full range of other historic materials which are posted at <http://gnso.icann.org/issues/new-gtlds/>

6. In addition, the Committee considered the responses to a Call for Expert Papers issued at the beginning of the policy development process[34]. These papers augmented a full set of GNSO Constituency Statements[35] and a set of Constituency Impact Statements[36] that addressed specific elements of the Principles, Recommendations and Implementation Guidelines.

7. The Committee was asked, at its February 2007 Los Angeles meeting, to confirm its rationale for recommending that ICANN introduce new top-level domains. In summary, there are five threads which have emerged:

(i) It is consistent with the reasons articulated in 1999 when the first proof-of-concept round was initiated

(ii) There are no technical impediments to the introduction of new top-level domains as evidenced by the two previous rounds

(iii) It is hoped that expanding the domain name space to accommodate the introduction of both new ASCII and internationalised domain name (IDN) top-level domains will give end users more choice about the nature of their presence on the Internet. In addition, users will be able to use domain names in their language of choice.

(iv) In addition, the introduction of a new top-level domain application process has the potential to promote competition in the provision of registry services, and to add to consumer choice, market differentiation and geographic and service-provider diversity which is consistent with ICANN's Core Value 6.

(v) No compelling reason has been articulated to not proceed with accepting applications for new top-level domains.

8. Article X, Part 7, Section E of the GNSO's Policy Development Process requires the submission of "constituency impact statements" which reflect the potential implementation impact of policy recommendations. By 4 July 2007 all GNSO Constituencies had submitted Constituency Impact Statements (CIS) to the gTLD-council mailing list[37]. Each of those statements is referred to throughout the next sections[38] and are found in full in Part B of the *Report*. The NCUC submitted Minority Statements on Recommendations 6 & 20 and on Implementation Guidelines F, H & P. These statements are found in full here in Annex A & C, respectively, as they relate specifically to the finalised text of those two recommendations. GNSO Committee Chair and Nominating Committee appointee Ms Avri Doria also submitted individual comments on the recommendation package. Her comments are found in Annex B here.

9. All Constituencies support the introduction of new TLDs particularly if the application process is transparent and objective. For example, the ISPCP said that, "...the ISPCP is highly supportive of the principles defined in this section, especially with regards to the statement in [principle A] (A): New generic top-level domains must be introduced in an

orderly, timely and predictable way. Network operators and ISPs must ensure their customers do not encounter problems in addressing their emails, and in their web searching and access activities, since this can cause customer dissatisfaction and overload help-desk complaints. Hence this principle is a vital component of any addition sequence to the gTLD namespace. The various criteria as defined in D, E and F, are also of great importance in contributing to minimise the risk of moving forward with any new gTLDs, and our constituency urges ICANN to ensure they are scrupulously observed during the applications evaluation process". The Business Constituency's (BC) CIS said that "...If the outcome is the best possible there will be a beneficial impact on business users from: a reduction in the competitive concentration in the Registry sector; increased choice of domain names; lower fees for registration and ownership; increased opportunities for innovative on-line business models." The Registrar Constituency (RC) agreed with this view stating that "...new gTLDs present an opportunity to Registrars in the form of additional products and associated services to offer to its customers. However, that opportunity comes with the costs if implementing the new gTLDs as well as the efforts required to do the appropriate business analysis to determine which of the new gTLDs are appropriate for its particular business model."

10. The Registry Constituency (RyC) said that "...Regarding increased competition, the RyC has consistently supported the introduction of new gTLDs because we believe that: there is a clear demand for new TLDs; competition creates more choices for potential registrants; introducing new TLDs with different purposes increases the public benefit; new gTLDs will result in creativity and differentiation in the domain name industry; the total market for all TLDs, new and old, will be expanded." In summary, the Committee recommended, "ICANN must implement a process that allows the introduction of new top-level domains. The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination. All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process". Given that this recommendation has support from all Constituencies, the following sections set out the other Terms of Reference recommendations.

#### **TERM OF REFERENCE -- SELECTION CRITERIA**

##### **1. Recommendation 2 Discussion -- Strings must not be confusingly similar to an existing top-level domain.**

- i) This recommendation has support from all the GNSO Constituencies. Ms Doria accepted the recommendation with the concern expressed below<sup>[39]</sup>.
- ii) The list of existing top-level domains is maintained by IANA and is listed in full on ICANN's website<sup>[40]</sup>. Naturally, as the application process enables the operation of new top-level domains this list will get much longer and the test more complex. The RyC, in its Impact Statement, said that "...This recommendation is especially important to the RyC. ... It is of prime concern for the RyC that the introduction of new gTLDs results in a ubiquitous experience for Internet users that minimizes user confusion. gTLD registries will be impacted operationally and financially if new gTLDs are introduced that create confusion with currently existing gTLD strings or with strings that are introduced in the future. There is a strong possibility of significant impact on gTLD registries if IDN versions of existing ASCII gTLDs are introduced by registries different than the ASCII gTLD registries. Not only could there be user confusion in both email and web applications, but dispute resolution processes could be greatly complicated." The ISPCP also stated that this recommendation was "especially important in the avoidance of any negative impact on network activities." The RC stated that "...Registrars would likely be hesitant to offer confusingly similar gTLDs due to customer demand and support concerns. On the other hand, applying the concept too broadly would inhibit gTLD applicants and ultimately limit choice to Registrars and their customers".
- iii) There are two other key concepts within this recommendation. The first is the issue of "confusingly similar" <sup>[41]</sup> and the second "likelihood of confusion". There is extensive experience within the Committee with respect to trademark law and the issues found below have been discussed at length, both within the Committee and amongst the Implementation Team.
- iv) The Committee used a wide variety of existing law<sup>[42]</sup>, international treaty agreements and covenants to arrive at a common understanding that strings should not be confusingly similar either to existing top-level domains like .com and .net or to existing trademarks<sup>[43]</sup>. For example, the Committee considered the World Trade Organisation's TRIPS agreement, in particular Article 16 which discusses the rights which are conferred to a trademark owner.<sup>[44]</sup> In particular, the Committee agreed upon an expectation that strings must avoid increasing opportunities for entities or individuals, who operate in bad faith and who wish to defraud consumers. The Committee also considered the Universal Declaration of Human Rights<sup>[45]</sup> and the International Covenant on Civil and Political Rights which address the "freedom of expression" element of the Committee's deliberations.
- v) The Committee also benefited from the work of the Protecting the Rights of Others Working Group (PRO-WG). The PRO-WG presented its *Final Report*<sup>[46]</sup> to the Committee at the June 2007 San Juan meeting. The Committee agreed that the Working Group could develop some reference implementation guidelines on rights protection mechanisms that may inform potential new TLD applicants during the application process. A small ad-hoc group of interested volunteers are preparing those materials for consideration by the Council by mid-October 2007.
- vi) The Committee had access to a wide range of differing approaches to rights holder protection mechanisms including the United Kingdom, the USA, Jordan, Egypt and Australia<sup>[47]</sup>.
- vii) In addition, the Committee referred to the 1883 *Paris Convention on the Protection of Industrial Property*<sup>[48]</sup>. It

describes the notion of confusion and describes creating confusion as "to create confusion by any means whatever" {Article 10bis (3) (1) and, further, being "liable to mislead the public" {Article 10bis (3) (3)}. The treatment of confusingly similar is also contained in European Union law (currently covering twenty-seven countries) and is structured as follows. "...because of its identity with or similarity to...there exists a likelihood of confusion on the part of the public...; the likelihood of confusion includes the likelihood of association..." {Article 4 (1) (b) of the 1988 EU Trade Mark directive 89/104/EEC}. Article 8 (1) (b) of the 1993 European Union Trade Mark regulation 40/94 is also relevant.

- viii) In the United States, existing trade mark law requires applicants for trademark registration to state under penalty of perjury that "...to the best of the verifier's knowledge and belief, no other person has the right to use such mark in commerce either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods of such other person, to cause confusion, or to cause mistake, or to deceive..." which is contained in Section 1051 (3) (d) of the US Trademark Act 2005 (found at <http://www.bitlaw.com/source/15usc/1051.html>.)[49]
- ix) In Australia, the Australian Trade Marks Act 1995 Section 10 says that "...For the purposes of this Act, a trade mark is taken to be deceptively similar to another trade mark if it so nearly resembles that other trade mark that it is likely to deceive or cause confusion" (found at [http://www.ipaustralia.gov.au/resources/legislation\\_index.shtml](http://www.ipaustralia.gov.au/resources/legislation_index.shtml))
- x) A number of different trademark offices provide guidance on how to interpret confusion. For example, the European Union Trade Mark Office provides guidance on how to interpret confusion. "...*confusion may be visual, phonetic or conceptual. A mere aural similarity may create a likelihood of confusion. A mere visual similarity may create a likelihood of confusion. Confusion is based on the fact that the relevant public does not tend to analyse a word in detail but pays more attention to the distinctive and dominant components. Similarities are more significant than dissimilarities. The visual comparison is based on an analysis of the number and sequence of the letters, the number of words and the structure of the signs. Further particularities may be of relevance, such as the existence of special letters or accents that may be perceived as an indication of a specific language. For words, the visual comparison coincides with the phonetic comparison unless in the relevant language the word is not pronounced as it is written. It should be assumed that the relevant public is either unfamiliar with that foreign language, or even if it understands the meaning in that foreign language, will still tend to pronounce it in accordance with the phonetic rules of their native language. The length of a name may influence the effect of differences. The shorter a name, the more easily the public is able to perceive all its single elements. Thus, small differences may frequently lead in short words to a different overall impression. In contrast, the public is less aware of differences between long names. The overall phonetic impression is particularly influenced by the number and sequence of syllables.*" (found at <http://oami.europa.eu/en/mark/marque/direc.htm>).
- xi) An extract from the United Kingdom's Trade Mark Office's Examiner's Guidance Manual is useful in explaining further the Committee's approach to developing its Recommendation. "*For likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the average consumer. Likelihood of association is not an alternative to likelihood of confusion, "but serves to define its scope". Mere association, in the sense that the later mark brings the earlier mark to mind is insufficient to find a likelihood of confusion, unless the average consumer, in bringing the earlier mark to mind, is led to expect the goods or services of both marks to be under the control of one single trade source. "The risk that the public might believe that the goods/services in question come from the same undertaking or, as the case may be, from economically-linked undertakings, constitutes a likelihood of confusion..."*" (found at <http://www.patent.gov.uk/tm/t-decisionmaking/t-law/t-law-manual.htm>)
- xii) The Committee also looked in detail at the existing provisions of ICANN's Registrar Accreditation Agreement, particularly Section 3.7.7.9[50] which says that "...The Registered Name Holder shall represent that, to the best of the Registered Name Holder's knowledge and belief, neither the registration of the Registered Name nor the manner in which it is directly or indirectly used infringes the legal rights of any third party."
- xiii) The implications of the introduction of Internationalised Domain Names (IDNs) are, in the main, the same as for ASCII top-level domains. On 22 March 2007 the IDN-WG released its *Outcomes Report*[51] that the Working Group presented to the GNSO Committee. The Working Group's exploration of IDN-specific issues confirmed that the new TLD recommendations are valid for IDN TLDs. The full IDN WG Report is found in Part B of the *Report*.
- xiv) The technical testing for IDNs at the top-level is not yet completed although strong progress is being made. Given this and the other work that is taking place around the introduction of IDNs at the top-level, there are some critical factors that may impede the immediate acceptance of new IDN TLD applications. The conditions under which those applications would be assessed would remain the same as for ASCII TLDs.
- xv) Detailed work continues on the preparation of an Implementation Plan that reflects both the Principles and the Recommendations. The proposed Implementation Plan deals with a comprehensive range of potentially controversial (for whatever reason) string applications which balances the need for reasonable protection of existing legal rights and the capacity to innovate with new uses for top level domains that may be attractive to a wide range of users[52].
- xvi) The draft Implementation Plan (included in the *Discussion Points* document), illustrates the flow of the application and evaluation process and includes a detailed dispute resolution and extended evaluation tracks designed to

resolve objections to applicants or applications.

- xvii) There is tension between those on the Committee who are concerned about the protection of existing TLD strings and those concerned with the protection of trademark and other rights as compared to those who wish, as far as possible, to preserve freedom of expression and creativity. The *Implementation Plan* sets out a series of tests to apply the recommendation during the application evaluation process.

**2. Recommendation 3 Discussion – Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law. Examples of these legal rights that are internationally recognized include, but are not limited to, rights defined in the Paris Convention for the Protection of Industry Property (in particular trademark rights), the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) (in particular freedom of expression rights).**

- i. This recommendation has support from all GNSO Constituencies. Ms Doria supported the recommendation with concern expressed below<sup>[53]</sup>.
- ii. This recommendation was discussed in detail in the lead up to the Committee's 7 June 2007 conference call and it was agreed that further work would be beneficial. That work was conducted through a series of teleconferences and email exchanges. The Committee decided to leave the recommendation text as it had been drafted and insert a new Principle G that reads "...The string evaluation process must not infringe the applicant's freedom of expression rights that are protected under internationally recognized principles of law."
- iii. Prior to this, the Committee engaged in comprehensive discussion about this recommendation and took advice from a number of experts within the group<sup>[54]</sup>. The original text of the recommendation has been modified to recognise that an applicant would be bound by the laws of the country where they are located and an applicant may be bound by another country that has jurisdiction over them. In addition, the original formulation that included "freedom of speech" was modified to read the more generally applicable "freedom of expression".
- iv. Before reaching agreement on the final text, the IPC and the NCUC, in their respective Constituency Impact Statements (CIS), had differing views. The NCUC argued that "...there is no recognition that trade marks (and other legal rights have legal limits and *defenses*." The IPC says "agreed [to the recommendation], and, as stated before, appropriate mechanisms must be in place to address conflicts that may arise between any proposed new string and the IP rights of others."

**3. Recommendation 4 Discussion – Strings must not cause any technical instability.**

- i. This recommendation is supported by all GNSO Constituencies and Ms Doria.
- ii. It was agreed by the Committee that the string should not cause any technical issues that threatened the stability and security of the Internet.
- iii. In its CIS, the ISPCP stated that "...this is especially important in the avoidance of any negative impact on network activities...The ISPCP considers recommendations 7 and 8 to be fundamental. The technical, financial, organizational and operational capability of the applicant are the evaluators' instruments for preventing potential negative impact on a new string on the activities of our sector (and indeed of many other sectors)." The IPC also agreed that "technical and operational stability are imperative to any new gTLD introduction." The RC said "...This is important to Registrars in that unstable registry and/or zone operations would have a serious and costly impact on its operations and customer service and support."
- iv. The Security and Stability Advisory Committee (SSAC) has been involved in general discussions about new top level domains and will be consulted formally to confirm that the implementation of the recommendations will not cause any technical instability.
- v. A reserved word list, which includes strings which are reserved for technical reasons, has been recommended by the RN-WG. This table is found in the section below.

**4. Recommendation 5 Discussion – Strings must not be a Reserved Word.<sup>[55]</sup>**

- i. This recommendation is supported by all GNSO Constituencies. Ms Doria supported the recommendation but expressed some concerns outlined in the footnote below.<sup>[56]</sup>
- ii. The RN WG developed a definition of "reserved word" in the context of new TLDs which said "...depending on the specific reserved name category as well as the type (ASCII or IDN), the reserved name requirements recommended may apply in any one or more of the following levels as indicated:
  1. At the top level regarding gTLD string restrictions
  2. At the second-level as contractual conditions
  3. At the third-level as contractual conditions for any new gTLDs that offer domain name registrations at the third-level.
- iii. The notion of "reserved words" has a specific meaning within the ICANN context. Each of the existing ICANN registry contracts has provisions within it that govern the use of reserved words. Some of these recommendations will become part of the contractual conditions for new registry operators.
- iv. The Reserved Names Working Group (RN-WG) developed a series of recommendations across a broad spectrum of

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reserved words. The Working Group's [57] was reviewed and the recommendations updated by the Committee at ICANN's Puerto Rico meeting and, with respect to the recommendations relating to IDNs, with IDN experts. The final recommendations are included in the following table.

	Reserved Name Category	Domain Name Level(s)	Recommendation
1	ICANN & IANA	All ASCII	The names listed as ICANN and IANA names will be reserved at all levels.
2	ICANN & IANA	Top level, IDN	Any names that appear in the IDN evaluation facility[58] which consist exclusively of translations of 'example' or 'test' that appear in the document at <a href="http://www.icann.org/topics/idn/idn-evaluation-plan-v2%209.pdf">http://www.icann.org/topics/idn/idn-evaluation-plan-v2%209.pdf</a> shall be reserved.
3	ICANN & IANA	2 <sup>nd</sup> & 3 <sup>rd</sup> levels, IDN	Any names that appear in the IDN evaluation facility which consist exclusively of translations of 'example' or 'test' that appear in the document at <a href="http://www.icann.org/topics/idn/idn-evaluation-plan-v2%209.pdf">http://www.icann.org/topics/idn/idn-evaluation-plan-v2%209.pdf</a> shall be reserved.
4	Symbols	All	We recommend that the current practice be maintained, so that no symbols other than the '-' [hyphen] be considered for use, with further allowance for any equivalent marks that may explicitly be made available in future revisions of the IDNA protocol.
5	Single and Two Character IDNs	IDNA-valid strings at all levels	Single and two-character U-labels on the top level and second level of a domain name should not be restricted in general. At the top level, requested strings should be analyzed on a case-by-case basis in the new gTLD process depending on the script and language used in order to determine whether the string should be granted for allocation in the DNS with particular caution applied to U-labels in Latin script (see Recommendation 10 below). Single and two character labels at the second level and the third level if applicable should be available for registration, provided they are consistent with the IDN Guidelines.
6	Single Letters	Top Level	We recommend reservation of single letters at the top level based on technical questions raised. If sufficient research at a later date demonstrates that the technical issues and concerns are addressed, the topic of releasing reservation status can be reconsidered.
7	Single Letters and Digits	2 <sup>nd</sup> Level	In future gTLDs we recommend that single letters and single digits be available at the second (and third level if applicable).
8	Single and Two Digits	Top Level	A top-level label must not be a plausible component of an IPv4 or IPv6 address. (e.g., .3, .99, .123, .1035, .0xAF, .1578234)
9	Single Letter, Single Digit Combinations	Top Level	Applications may be considered for single letter, single digit combinations at the top level in accordance with the terms set forth in the new gTLD process.  Examples include .3F, .A1, .u7.
10	Two Letters	Top Level	We recommend that the current practice of allowing two letter names at the top level, only for ccTLDs, remains at this time.[59]  Examples include .AU, .DE, .UK.
11	Any combination of Two Letters, Digits	2 <sup>nd</sup> Level	Registries may propose release provided that measures to avoid confusion with any corresponding country codes are implemented.[60] Examples include ba.aero, ub.cat, 53.com, 3M.com, e8.org.
12	Tagged Names	Top Level ASCII	In the absence of standardization activity and appropriate IANA registration, all labels with hyphens in both the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n") must be reserved at the top-level.[61]
13	N/A	Top Level IDN	For each IDN gTLD proposed, applicant must provide both the "ASCII compatible encoding" ("A-label") and the "Unicode display form" ("U-label") [62] For example:

			<p>If the Chinese word for 'Beijing' is proposed as a new gTLD, the applicant would be required to provide the A-label (xn--1lq90i) and the U-label (北京).</p> <ul style="list-style-type: none"> <li>If the Japanese word for 'Tokyo' is proposed as a new gTLD, the applicant would be required to provide the A-label (xn--1lqs71d) and the U-label (東京).</li> </ul>
14	Tagged Names	2 <sup>nd</sup> Level ASCII	The current reservation requirement be reworded to say, " <i>In the absence of standardization activity and appropriate IANA registration, all labels with hyphens in both the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n") must be reserved in ASCII at the second (2<sup>nd</sup>) level.</i> [63] – added words in <i>italics</i> . (Note that names starting with "xn--" may only be used if the current ICANN IDN Guidelines are followed by a gTLD registry.)
15	Tagged Names	3 <sup>rd</sup> Level ASCII	All labels with hyphens in both the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n") must be reserved in ASCII at the third (3 <sup>rd</sup> level) for gTLD registries that register names at the third level."[64] – added words in <i>italics</i> . (Note that names starting with "xn--" may only be used if the current ICANN IDN Guidelines are followed by a gTLD registry.)
16	NIC, WHOIS, WWW	Top ASCII	The following names must be reserved: nic, whois, www.
17	NIC, WHOIS, WWW	Top IDN	Do not try to translate nic, whois and www into Unicode versions for various scripts or to reserve any ACE versions of such translations or transliterations if they exist.
18	NIC, WHOIS, WWW	Second and Third* ASCII	The following names must be reserved for use in connection with the operation of the registry for the Registry TLD: nic, whois, www Registry Operator may use them, but upon conclusion of Registry Operator's designation as operator of the registry for the Registry TLD, they shall be transferred as specified by ICANN. (*Third level only applies in cases where a registry offers registrations at the third level.)
19	NIC, WHOIS, WWW	Second and Third* IDN	Do not try to translate nic, whois and www into Unicode versions for various scripts or to reserve any ACE versions of such translations or transliterations if they exist, except on a case by case basis as proposed by given registries. (*Third level only applies in cases where a registry offers registrations at the third level.)
20	Geographic and geopolitical	Top Level ASCII and IDN	<p>There should be no geographical reserved names (i.e., no exclusionary list, no presumptive right of registration, no separate administrative procedure, etc.). The proposed challenge mechanisms currently being proposed in the draft new gTLD process would allow national or local governments to initiate a challenge, therefore no additional protection mechanisms are needed. Potential applicants for a new TLD need to represent that the use of the proposed string is not in violation of the national laws in which the applicant is incorporated.</p> <p>However, new TLD applicants interested in applying for a TLD that incorporates a country, territory, or place name should be advised of the GAC Principles, and the advisory role vested to it under the ICANN Bylaws. Additionally, a summary overview of the obstacles encountered by previous applicants involving similar TLDs should be provided to allow an applicant to make an informed decision. Potential applicants should also be advised that the failure of the GAC, or an individual GAC member, to file a challenge during the TLD application process, does not constitute a waiver of the authority vested to the GAC under the ICANN Bylaws.</p> <p><i>Note New gTLD Recommendation 20</i></p>
21	Geographic and geopolitical	All Levels ASCII and IDN	<p>The term 'geopolitical names' should be avoided until such time that a useful definition can be adopted. The basis for this recommendation is founded on the potential ambiguity regarding the definition of the term, and the lack of any specific definition of it in the WIPO Second Report on Domain Names or GAC recommendations.</p> <p><i>Note New gTLD Recommendation 20</i></p>
22	Geographic and	Second Level	The consensus view of the working group is given the lack of any

	geopolitical	& Third Level if applicable, ASCII & IDN	<p>established international law on the subject, conflicting legal opinions, and conflicting recommendations emerging from various governmental fora, the current geographical reservation provision contained in the sTLD contracts during the 2004 Round should be removed, and harmonized with the more recently executed .COM, .NET, .ORG, .BIZ and .INFO registry contracts. The only exception to this consensus recommendation is those registries incorporated/organized under countries that require additional protection for geographical identifiers. In this instance, the registry would have to incorporate appropriate mechanisms to comply with their national/local laws.</p> <p>For those registries incorporated/organized under the laws of those countries that have expressly supported the guidelines of the WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications as adopted by the WIPO General Assembly, it is strongly recommended (but not mandated) that these registries take appropriate action to promptly implement protections that are in line with these WIPO guidelines and are in accordance with the relevant national laws of the applicable Member State.</p> <p><i>Note New gTLD Recommendation 20</i></p>
23	gTLD Reserved Names	Second & Third Level ASCII and IDN (when applicable)	<p>Absent justification for user confusion[65], the recommendation is that gTLD strings should no longer be reserved from registration for new gTLDs at the second or when applicable at the third level. Applicants for new gTLDs should take into consideration possible abusive or confusing uses of existing gTLD strings at the second level of their corresponding gTLD, based on the nature of their gTLD, when developing the startup process for their gTLD.</p>
24	Controversial Names	All Levels, ASCII & IDN	<p>There should not be a new reserved names category for Controversial Names.</p>
25	Controversial Names	Top Level, ASCII & IDN	<p>There should be a list of disputed names created as a result of the dispute process to be created by the new gTLD process.</p> <p><i>Note New gTLD Recommendation 6</i></p>
26	Controversial Names	Top Level, ASCII & IDN	<p>In the event of the initiation of a CN-DRP process, applications for that label will be placed in a HOLD status that would allow for the dispute to be further examined. If the dispute is dismissed or otherwise resolved favorably, the applications will reenter the processing queue. The period of time allowed for dispute should be finite and should be relegated to the CN-DRP process. The external dispute process should be defined to be objective, neutral, and transparent. The outcome of any dispute shall not result in the development of new categories of Reserved Names.[66]</p> <p><i>Note New gTLD Recommendation 6</i></p>
27	Controversial Names	Top Level, ASCII & IDN	<p>The new GTLD Controversial Names Dispute Resolution Panel should be established as a standing mechanism that is convened at the time a dispute is initiated. Preliminary elements of that process are provided in this report but further work is needed in this area.</p> <p><i>Note New gTLD Recommendation 6</i></p>
28	Controversial Names	Top Level, ASCII & IDN	<p>Within the dispute process, disputes would be initiated by the ICANN Advisory Committees (e.g. ALAC or GAC) or supporting organizations (e.g. GNSO or ccNSO). As these organizations do not currently have formal processes for receiving, and deciding on such activities, these processes would need to be defined:</p> <ul style="list-style-type: none"> <li>o The Advisory Groups and the Supporting Organizations, using their own processes and consistent with their organizational structure, will need to define procedures for deciding on any requests for dispute initiation.</li> <li>o Any consensus or other formally supported position from an ICANN Advisory Committee or ICANN Supporting Organization must document the position of each member within that committee or organization (i.e., support, opposition, abstention) in compliance with both the spirit and letter of the ICANN bylaws regarding openness and transparency.</li> </ul> <p><i>Note New gTLD Recommendation 6</i></p>

29	Controversial Names	Top Level, ASCII & IDN	<p>Further work is needed to develop predictable and transparent criteria that can be used by the Controversial Resolution Panel. These criteria must take into account the need to:</p> <ul style="list-style-type: none"> <li>▪ 𐄂𐄃𐄄𐄅𐄆𐄇𐄈𐄉𐄊𐄋𐄌𐄍𐄎𐄏𐄐𐄑𐄒𐄓𐄔𐄕𐄖𐄗𐄘𐄙𐄚𐄛𐄜𐄝𐄞𐄟𐄠𐄡𐄢𐄣𐄤𐄥𐄦𐄧𐄨𐄩𐄪𐄫𐄬𐄭𐄮𐄯𐄰𐄱𐄲𐄳𐄴𐄵𐄶𐄷𐄸𐄹𐄺𐄻𐄼𐄽𐄾𐄿𐅀𐅁𐅂𐅃𐅄𐅅𐅆𐅇𐅈𐅉𐅊𐅋𐅌𐅍𐅎𐅏𐅐𐅑𐅒𐅓𐅔𐅕𐅖𐅗𐅘𐅙𐅚𐅛𐅜𐅝𐅞𐅟𐅠𐅡𐅢𐅣𐅤𐅥𐅦𐅧𐅨𐅩𐅪𐅫𐅬𐅭𐅮𐅯𐅰𐅱𐅲𐅳𐅴𐅵𐅶𐅷𐅸𐅹𐅺𐅻𐅼𐅽𐅾𐅿𐆀𐆁𐆂𐆃𐆄𐆅𐆆𐆇𐆈𐆉𐆊𐆋𐆌𐆍𐆎𐆏𐆐𐆑𐆒𐆓𐆔𐆕𐆖𐆗𐆘𐆙𐆚𐆛𐆜𐆝𐆞𐆟𐆠𐆡𐆢𐆣𐆤𐆥𐆦𐆧𐆨𐆩𐆪𐆫𐆬𐆭𐆮𐆯𐆰𐆱𐆲𐆳𐆴𐆵𐆶𐆷𐆸𐆹𐆺𐆻𐆼𐆽𐆾𐆿𐇀𐇁𐇂𐇃𐇄𐇅𐇆𐇇𐇈𐇉𐇊𐇋𐇌𐇍𐇎𐇏𐇐𐇑𐇒𐇓𐇔𐇕𐇖𐇗𐇘𐇙𐇚𐇛𐇜𐇝𐇞𐇟𐇠𐇡𐇢𐇣𐇤𐇥𐇦𐇧𐇨𐇩𐇪𐇫𐇬𐇭𐇮𐇯𐇰𐇱𐇲𐇳𐇴𐇵𐇶𐇷𐇸𐇹𐇺𐇻𐇼𐇽𐇾𐇿𐈀𐈁𐈂𐈃𐈄𐈅𐈆𐈇𐈈𐈉𐈊𐈋𐈌𐈍𐈎𐈏𐈐𐈑𐈒𐈓𐈔𐈕𐈖𐈗𐈘𐈙𐈚𐈛𐈜𐈝𐈞𐈟𐈠𐈡𐈢𐈣𐈤𐈥𐈦𐈧𐈨𐈩𐈪𐈫𐈬𐈭𐈮𐈯𐈰𐈱𐈲𐈳𐈴𐈵𐈶𐈷𐈸𐈹𐈺𐈻𐈼𐈽𐈾𐈿𐉀𐉁𐉂𐉃𐉄𐉅𐉆𐉇𐉈𐉉𐉊𐉋𐉌𐉍𐉎𐉏𐉐𐉑𐉒𐉓𐉔𐉕𐉖𐉗𐉘𐉙𐉚𐉛𐉜𐉝𐉞𐉟𐉠𐉡𐉢𐉣𐉤𐉥𐉦𐉧𐉨𐉩𐉪𐉫𐉬𐉭𐉮𐉯𐉰𐉱𐉲𐉳𐉴𐉵𐉶𐉷𐉸𐉹𐉺𐉻𐉼𐉽𐉾𐉿𐊀𐊁𐊂𐊃𐊄𐊅𐊆𐊇𐊈𐊉𐊊𐊋𐊌𐊍𐊎𐊏𐊐𐊑𐊒𐊓𐊔𐊕𐊖𐊗𐊘𐊙𐊚𐊛𐊜𐊝𐊞𐊟𐊠𐊡𐊢𐊣𐊤𐊥𐊦𐊧𐊨𐊩𐊪𐊫𐊬𐊭𐊮𐊯𐊰𐊱𐊲𐊳𐊴𐊵𐊶𐊷𐊸𐊹𐊺𐊻𐊼𐊽𐊾𐊿𐋀𐋁𐋂𐋃𐋄𐋅𐋆𐋇𐋈𐋉𐋊𐋋𐋌𐋍𐋎𐋏𐋐𐋑𐋒𐋓𐋔𐋕𐋖𐋗𐋘𐋙𐋚𐋛𐋜𐋝𐋞𐋟𐋠𐋡𐋢𐋣𐋤𐋥𐋦𐋧𐋨𐋩𐋪𐋫𐋬𐋭𐋮𐋯𐋰𐋱𐋲𐋳𐋴𐋵𐋶𐋷𐋸𐋹𐋺𐋻𐋼𐋽𐋾𐋿𐌀𐌁𐌂𐌃𐌄𐌅𐌆𐌇𐌈𐌉𐌊𐌋𐌌𐌍𐌎𐌏𐌐𐌑𐌒𐌓𐌔𐌕𐌖𐌗𐌘𐌙𐌚𐌛𐌜𐌝𐌞𐌟𐌠𐌡𐌢𐌣𐌤𐌥𐌦𐌧𐌨𐌩𐌪𐌫𐌬𐌭𐌮𐌯𐌰𐌱𐌲𐌳𐌴𐌵𐌶𐌷𐌸𐌹𐌺𐌻𐌼𐌽𐌾𐌿𐍀𐍁𐍂𐍃𐍄𐍅𐍆𐍇𐍈𐍉𐍊𐍋𐍌𐍍𐍎𐍏𐍐𐍑𐍒𐍓𐍔𐍕𐍖𐍗𐍘𐍙𐍚𐍛𐍜𐍝𐍞𐍟𐍠𐍡𐍢𐍣𐍤𐍥𐍦𐍧𐍨𐍩𐍪𐍫𐍬𐍭𐍮𐍯𐍰𐍱𐍲𐍳𐍴𐍵𐍶𐍷𐍸𐍹𐍺𐍻𐍼𐍽𐍾𐍿𐎀𐎁𐎂𐎃𐎄𐎅𐎆𐎇𐎈𐎉𐎊𐎋𐎌𐎍𐎎𐎏𐎐𐎑𐎒𐎓𐎔𐎕𐎖𐎗𐎘𐎙𐎚𐎛𐎜𐎝𐎞𐎟𐎠𐎡𐎢𐎣𐎤𐎥𐎦𐎧𐎨𐎩𐎪𐎫𐎬𐎭𐎮𐎯𐎰𐎱𐎲𐎳𐎴𐎵𐎶𐎷𐎸𐎹𐎺𐎻𐎼𐎽𐎾𐎿𐏀𐏁𐏂𐏃𐏄𐏅𐏆𐏇𐏈𐏉𐏊𐏋𐏌𐏍𐏎𐏏𐏐𐏑𐏒𐏓𐏔𐏕𐏖𐏗𐏘𐏙𐏚𐏛𐏜𐏝𐏞𐏟𐏠𐏡𐏢𐏣𐏤𐏥𐏦𐏧𐏨𐏩𐏪𐏫𐏬𐏭𐏮𐏯𐏰𐏱𐏲𐏳𐏴𐏵𐏶𐏷𐏸𐏹𐏺𐏻𐏼𐏽𐏾𐏿𐐀𐐁𐐂𐐃𐐄𐐅𐐆𐐇𐐈𐐉𐐊𐐋𐐌𐐍𐐎𐐏𐐐𐐑𐐒𐐓𐐔𐐕𐐖𐐗𐐘𐐙𐐚𐐛𐐜𐐝𐐞𐐟𐐠𐐡𐐢𐐣𐐤𐐥𐐦𐐧𐐨𐐩𐐪𐐫𐐬𐐭𐐮𐐯𐐰𐐱𐐲𐐳𐐴𐐵𐐶𐐷𐐸𐐹𐐺𐐻𐐼𐐽𐐾𐐿𐑀𐑁𐑂𐑃𐑄𐑅𐑆𐑇𐑈𐑉𐑊𐑋𐑌𐑍𐑎𐑏𐑐𐑑𐑒𐑓𐑔𐑕𐑖𐑗𐑘𐑙𐑚𐑛𐑜𐑝𐑞𐑟𐑠𐑡𐑢𐑣𐑤𐑥𐑦𐑧𐑨𐑩𐑪𐑫𐑬𐑭𐑮𐑯𐑰𐑱𐑲𐑳𐑴𐑵𐑶𐑷𐑸𐑹𐑺𐑻𐑼𐑽𐑾𐑿𐒀𐒁𐒂𐒃𐒄𐒅𐒆𐒇𐒈𐒉𐒊𐒋𐒌𐒍𐒎𐒏𐒐𐒑𐒒𐒓𐒔𐒕𐒖𐒗𐒘𐒙𐒚𐒛𐒜𐒝𐒞𐒟𐒠𐒡𐒢𐒣𐒤𐒥𐒦𐒧𐒨𐒩𐒪𐒫𐒬𐒭𐒮𐒯𐒰𐒱𐒲𐒳𐒴𐒵𐒶𐒷𐒸𐒹𐒺𐒻𐒼𐒽𐒾𐒿𐓀𐓁𐓂𐓃𐓄𐓅𐓆𐓇𐓈𐓉𐓊𐓋𐓌𐓍𐓎𐓏𐓐𐓑𐓒𐓓𐓔𐓕𐓖𐓗𐓘𐓙𐓚𐓛𐓜𐓝𐓞𐓟𐓠𐓡𐓢𐓣𐓤𐓥𐓦𐓧𐓨𐓩𐓪𐓫𐓬𐓭𐓮𐓯𐓰𐓱𐓲𐓳𐓴𐓵𐓶𐓷𐓸𐓹𐓺𐓻𐓼𐓽𐓾𐓿𐔀𐔁𐔂𐔃𐔄𐔅𐔆𐔇𐔈𐔉𐔊𐔋𐔌𐔍𐔎𐔏𐔐𐔑𐔒𐔓𐔔𐔕𐔖𐔗𐔘𐔙𐔚𐔛𐔜𐔝𐔞𐔟𐔠𐔡𐔢𐔣𐔤𐔥𐔦𐔧𐔨𐔩𐔪𐔫𐔬𐔭𐔮𐔯𐔰𐔱𐔲𐔳𐔴𐔵𐔶𐔷𐔸𐔹𐔺𐔻𐔼𐔽𐔾𐔿𐕀𐕁𐕂𐕃𐕄𐕅𐕆𐕇𐕈𐕉𐕊𐕋𐕌𐕍𐕎𐕏𐕐𐕑𐕒𐕓𐕔𐕕𐕖𐕗𐕘𐕙𐕚𐕛𐕜𐕝𐕞𐕟𐕠𐕡𐕢𐕣𐕤𐕥𐕦𐕧𐕨𐕩𐕪𐕫𐕬𐕭𐕮𐕯𐕰𐕱𐕲𐕳𐕴𐕵𐕶𐕷𐕸𐕹𐕺𐕻𐕼𐕽𐕾𐕿𐖀𐖁𐖂𐖃𐖄𐖅𐖆𐖇𐖈𐖉𐖊𐖋𐖌𐖍𐖎𐖏𐖐𐖑𐖒𐖓𐖔𐖕𐖖𐖗𐖘𐖙𐖚𐖛𐖜𐖝𐖞𐖟𐖠𐖡𐖢𐖣𐖤𐖥𐖦𐖧𐖨𐖩𐖪𐖫𐖬𐖭𐖮𐖯𐖰𐖱𐖲𐖳𐖴𐖵𐖶𐖷𐖸𐖹𐖺𐖻𐖼𐖽𐖾𐖿𐗀𐗁𐗂𐗃𐗄𐗅𐗆𐗇𐗈𐗉𐗊𐗋𐗌𐗍𐗎𐗏𐗐𐗑𐗒𐗓𐗔𐗕𐗖𐗗𐗘𐗙𐗚𐗛𐗜𐗝𐗞𐗟𐗠𐗡𐗢𐗣𐗤𐗥𐗦𐗧𐗨𐗩𐗪𐗫𐗬𐗭𐗮𐗯𐗰𐗱𐗲𐗳𐗴𐗵𐗶𐗷𐗸𐗹𐗺𐗻𐗼𐗽𐗾𐗿𐘀𐘁𐘂𐘃𐘄𐘅𐘆𐘇𐘈𐘉𐘊𐘋𐘌𐘍𐘎𐘏𐘐𐘑𐘒𐘓𐘔𐘕𐘖𐘗𐘘𐘙𐘚𐘛𐘜𐘝𐘞𐘟𐘠𐘡𐘢𐘣𐘤𐘥𐘦𐘧𐘨𐘩𐘪𐘫𐘬𐘭𐘮𐘯𐘰𐘱𐘲𐘳𐘴𐘵𐘶𐘷𐘸𐘹𐘺𐘻𐘼𐘽𐘾𐘿𐙀𐙁𐙂𐙃𐙄𐙅𐙆𐙇𐙈𐙉𐙊𐙋𐙌𐙍𐙎𐙏𐙐𐙑𐙒𐙓𐙔𐙕𐙖𐙗𐙘𐙙𐙚𐙛𐙜𐙝𐙞𐙟𐙠𐙡𐙢𐙣𐙤𐙥𐙦𐙧𐙨𐙩𐙪𐙫𐙬𐙭𐙮𐙯𐙰𐙱𐙲𐙳𐙴𐙵𐙶𐙷𐙸𐙹𐙺𐙻𐙼𐙽𐙾𐙿𐚀𐚁𐚂𐚃𐚄𐚅𐚆𐚇𐚈𐚉𐚊𐚋𐚌𐚍𐚎𐚏𐚐𐚑𐚒𐚓𐚔𐚕𐚖𐚗𐚘𐚙𐚚𐚛𐚜𐚝𐚞𐚟𐚠𐚡𐚢𐚣𐚤𐚥𐚦𐚧𐚨𐚩𐚪𐚫𐚬𐚭𐚮𐚯𐚰𐚱𐚲𐚳𐚴𐚵𐚶𐚷𐚸𐚹𐚺𐚻𐚼𐚽𐚾𐚿𐛀𐛁𐛂𐛃𐛄𐛅𐛆𐛇𐛈𐛉𐛊𐛋𐛌𐛍𐛎𐛏𐛐𐛑𐛒𐛓𐛔𐛕𐛖𐛗𐛘𐛙𐛚𐛛𐛜𐛝𐛞𐛟𐛠𐛡𐛢𐛣𐛤𐛥𐛦𐛧𐛨𐛩𐛪𐛫𐛬𐛭𐛮𐛯𐛰𐛱𐛲𐛳𐛴𐛵𐛶𐛷𐛸𐛹𐛺𐛻𐛼𐛽𐛾𐛿𐜀𐜁𐜂𐜃𐜄𐜅𐜆𐜇𐜈𐜉𐜊𐜋𐜌𐜍𐜎𐜏𐜐𐜑𐜒𐜓𐜔𐜕𐜖𐜗𐜘𐜙𐜚𐜛𐜜𐜝𐜞𐜟𐜠𐜡𐜢𐜣𐜤𐜥𐜦𐜧𐜨𐜩𐜪𐜫𐜬𐜭𐜮𐜯𐜰𐜱𐜲𐜳𐜴𐜵𐜶𐜷𐜸𐜹𐜺𐜻𐜼𐜽𐜾𐜿𐝀𐝁𐝂𐝃𐝄𐝅𐝆𐝇𐝈𐝉𐝊𐝋𐝌𐝍𐝎𐝏𐝐𐝑𐝒𐝓𐝔𐝕𐝖𐝗𐝘𐝙𐝚𐝛𐝜𐝝𐝞𐝟𐝠𐝡𐝢𐝣𐝤𐝥𐝦𐝧𐝨𐝩𐝪𐝫𐝬𐝭𐝮𐝯𐝰𐝱𐝲𐝳𐝴𐝵𐝶𐝷𐝸𐝹𐝺𐝻𐝼𐝽𐝾𐝿𐞀𐞁𐞂𐞃𐞄𐞅𐞆𐞇𐞈𐞉𐞊𐞋𐞌𐞍𐞎𐞏𐞐𐞑𐞒𐞓𐞔𐞕𐞖𐞗𐞘𐞙𐞚𐞛𐞜𐞝𐞞𐞟𐞠𐞡𐞢𐞣𐞤𐞥𐞦𐞧𐞨𐞩𐞪𐞫𐞬𐞭𐞮𐞯𐞰𐞱𐞲𐞳𐞴𐞵𐞶𐞷𐞸𐞹𐞺𐞻𐞼𐞽𐞾𐞿𐟀𐟁𐟂𐟃𐟄𐟅𐟆𐟇𐟈𐟉𐟊𐟋𐟌𐟍𐟎𐟏𐟐𐟑𐟒𐟓𐟔𐟕𐟖𐟗𐟘𐟙𐟚𐟛𐟜𐟝𐟞𐟟𐟠𐟡𐟢𐟣𐟤𐟥𐟦𐟧𐟨𐟩𐟪𐟫𐟬𐟭𐟮𐟯𐟰𐟱𐟲𐟳𐟴𐟵𐟶𐟷𐟸𐟹𐟺𐟻𐟼𐟽𐟾𐟿𐠀𐠁𐠂𐠃𐠄𐠅𐠆𐠇𐠈𐠉𐠊𐠋𐠌𐠍𐠎𐠏𐠐𐠑𐠒𐠓𐠔𐠕𐠖𐠗𐠘𐠙𐠚𐠛𐠜𐠝𐠞𐠟𐠠𐠡𐠢𐠣𐠤𐠥𐠦𐠧𐠨𐠩𐠪𐠫𐠬𐠭𐠮𐠯𐠰𐠱𐠲𐠳𐠴𐠵𐠶𐠷𐠸𐠹𐠺𐠻𐠼𐠽𐠾𐠿𐡀𐡁𐡂𐡃𐡄𐡅𐡆𐡇𐡈𐡉𐡊𐡋𐡌𐡍𐡎𐡏𐡐𐡑𐡒𐡓𐡔𐡕𐡖𐡗𐡘𐡙𐡚𐡛𐡜𐡝𐡞𐡟𐡠𐡡𐡢𐡣𐡤𐡥𐡦𐡧𐡨𐡩𐡪𐡫𐡬𐡭𐡮𐡯𐡰𐡱𐡲𐡳𐡴𐡵𐡶𐡷𐡸𐡹𐡺𐡻𐡼𐡽𐡾𐡿𐢀𐢁𐢂𐢃𐢄𐢅𐢆𐢇𐢈𐢉𐢊𐢋𐢌𐢍𐢎𐢏𐢐𐢑𐢒𐢓𐢔𐢕𐢖𐢗𐢘𐢙𐢚𐢛𐢜𐢝𐢞𐢟𐢠𐢡𐢢𐢣𐢤𐢥𐢦𐢧𐢨𐢩𐢪𐢫𐢬𐢭𐢮𐢯𐢰𐢱𐢲𐢳𐢴𐢵𐢶𐢷𐢸𐢹𐢺𐢻𐢼𐢽𐢾𐢿𐣀𐣁𐣂𐣃𐣄𐣅𐣆𐣇𐣈𐣉𐣊𐣋𐣌𐣍𐣎𐣏𐣐𐣑𐣒𐣓𐣔𐣕𐣖𐣗𐣘𐣙𐣚𐣛𐣜𐣝𐣞𐣟𐣠𐣡𐣢𐣣𐣤𐣥𐣦𐣧𐣨𐣩𐣪𐣫𐣬𐣭𐣮𐣯𐣰𐣱𐣲𐣳𐣴𐣵𐣶𐣷𐣸𐣹𐣺𐣻𐣼𐣽𐣾𐣿𐤀𐤁𐤂𐤃𐤄𐤅𐤆𐤇𐤈𐤉𐤊𐤋𐤌𐤍𐤎𐤏𐤐𐤑𐤒𐤓𐤔𐤕𐤖𐤗𐤘𐤙𐤚𐤛𐤜𐤝𐤞𐤟𐤠𐤡𐤢𐤣𐤤𐤥𐤦𐤧𐤨𐤩𐤪𐤫𐤬𐤭𐤮𐤯𐤰𐤱𐤲𐤳𐤴𐤵𐤶𐤷𐤸𐤹𐤺𐤻𐤼𐤽𐤾𐤿𐥀𐥁𐥂𐥃𐥄𐥅𐥆𐥇𐥈𐥉𐥊𐥋𐥌𐥍𐥎𐥏𐥐𐥑𐥒𐥓𐥔𐥕𐥖𐥗𐥘𐥙𐥚𐥛𐥜𐥝𐥞𐥟𐥠𐥡𐥢𐥣𐥤𐥥𐥦𐥧𐥨𐥩𐥪𐥫𐥬𐥭𐥮𐥯𐥰𐥱𐥲𐥳𐥴𐥵𐥶𐥷𐥸𐥹𐥺𐥻𐥼𐥽𐥾𐥿𐦀𐦁𐦂𐦃𐦄𐦅𐦆𐦇𐦈𐦉𐦊𐦋𐦌𐦍𐦎𐦏𐦐𐦑𐦒𐦓𐦔𐦕𐦖𐦗𐦘𐦙𐦚𐦛𐦜𐦝𐦞𐦟𐦠𐦡𐦢𐦣𐦤𐦥𐦦𐦧𐦨𐦩𐦪𐦫𐦬𐦭𐦮𐦯𐦰𐦱𐦲𐦳𐦴𐦵𐦶𐦷𐦸𐦹𐦺𐦻𐦼𐦽𐦾𐦿𐧀𐧁𐧂𐧃𐧄𐧅𐧆𐧇𐧈𐧉𐧊𐧋𐧌𐧍𐧎𐧏𐧐𐧑𐧒𐧓𐧔𐧕𐧖𐧗𐧘𐧙𐧚𐧛𐧜𐧝𐧞𐧟𐧠𐧡𐧢𐧣𐧤𐧥𐧦𐧧𐧨𐧩𐧪𐧫𐧬𐧭𐧮𐧯𐧰𐧱𐧲𐧳𐧴𐧵𐧶𐧷𐧸𐧹𐧺𐧻𐧼𐧽𐧾𐧿𐨀𐨁𐨂𐨃𐨄𐨅𐨆𐨇𐨈𐨉𐨊𐨋𐨌𐨍𐨎𐨏𐨐𐨑𐨒𐨓𐨔𐨕𐨖𐨗𐨘𐨙𐨚𐨛𐨜𐨝𐨞𐨟𐨠𐨡𐨢𐨣𐨤𐨥𐨦𐨧𐨨𐨩𐨪𐨫𐨬𐨭𐨮𐨯𐨰𐨱𐨲𐨳𐨴𐨵𐨶𐨷𐨹𐨺𐨸𐨻𐨼𐨽𐨾𐨿𐩀𐩁𐩂𐩃𐩄𐩅𐩆𐩇𐩈𐩉𐩊𐩋𐩌𐩍𐩎𐩏𐩐𐩑𐩒𐩓𐩔𐩕𐩖𐩗𐩘𐩙𐩚𐩛𐩜𐩝𐩞𐩟𐩠𐩡𐩢𐩣𐩤𐩥𐩦𐩧𐩨𐩩𐩪𐩫𐩬𐩭𐩮𐩯𐩰𐩱𐩲𐩳𐩴𐩵𐩶𐩷𐩸𐩹𐩺𐩻𐩼𐩽𐩾𐩿𐪀𐪁𐪂𐪃𐪄𐪅𐪆𐪇𐪈𐪉𐪊𐪋𐪌𐪍𐪎𐪏𐪐𐪑𐪒𐪓𐪔𐪕𐪖𐪗𐪘𐪙𐪚𐪛𐪜𐪝𐪞𐪟𐪠𐪡𐪢𐪣𐪤𐪥𐪦𐪧𐪨𐪩𐪪𐪫𐪬𐪭𐪮𐪯𐪰𐪱𐪲𐪳𐪴𐪵𐪶𐪷𐪸𐪹𐪺𐪻𐪼𐪽𐪾𐪿𐫀𐫁𐫂𐫃𐫄𐫅𐫆𐫇𐫈𐫉𐫊𐫋𐫌𐫍𐫎𐫏𐫐𐫑𐫒𐫓𐫔𐫕𐫖𐫗𐫘𐫙𐫚𐫛𐫜𐫝𐫞𐫟𐫠𐫡𐫢𐫣𐫤𐫦𐫥𐫧𐫨𐫩𐫪𐫫𐫬𐫭𐫮𐫯𐫰𐫱𐫲𐫳𐫴𐫵𐫶𐫷𐫸𐫹𐫺𐫻𐫼𐫽𐫾𐫿𐬀𐬁𐬂𐬃𐬄𐬅𐬆𐬇𐬈𐬉𐬊𐬋𐬌𐬍𐬎𐬏𐬐𐬑𐬒𐬓𐬔𐬕𐬖𐬗𐬘𐬙𐬚𐬛𐬜𐬝𐬞𐬟𐬠𐬡𐬢𐬣𐬤𐬥𐬦𐬧𐬨𐬩𐬪𐬫𐬬𐬭𐬮𐬯𐬰𐬱𐬲𐬳𐬴𐬵𐬶𐬷𐬸𐬹𐬺𐬻𐬼𐬽𐬾𐬿𐭀𐭁𐭂𐭃𐭄𐭅𐭆𐭇𐭈𐭉𐭊𐭋𐭌𐭍𐭎𐭏𐭐𐭑𐭒𐭓𐭔𐭕𐭖𐭗𐭘𐭙𐭚𐭛𐭜𐭝𐭞𐭟𐭠𐭡𐭢𐭣𐭤𐭥𐭦𐭧𐭨𐭩𐭪𐭫𐭬𐭭𐭮𐭯𐭰𐭱𐭲𐭳𐭴𐭵𐭶𐭷𐭸𐭹𐭺𐭻𐭼𐭽𐭾𐭿𐮀𐮁𐮂𐮃𐮄𐮅𐮆𐮇𐮈𐮉𐮊𐮋𐮌𐮍𐮎𐮏𐮐𐮑𐮒𐮓𐮔𐮕𐮖𐮗𐮘𐮙𐮚𐮛𐮜𐮝𐮞𐮟𐮠𐮡𐮢𐮣𐮤𐮥𐮦𐮧𐮨𐮩𐮪𐮫𐮬𐮭𐮮𐮯𐮰𐮱𐮲𐮳𐮴𐮵𐮶𐮷𐮸𐮹𐮺𐮻𐮼𐮽𐮾𐮿𐯀𐯁𐯂𐯃𐯄𐯅𐯆𐯇𐯈𐯉𐯊𐯋𐯌𐯍𐯎𐯏𐯐𐯑𐯒𐯓𐯔𐯕𐯖𐯗𐯘𐯙𐯚𐯛𐯜𐯝𐯞𐯟𐯠𐯡𐯢𐯣𐯤𐯥𐯦𐯧𐯨𐯩𐯪𐯫𐯬𐯭𐯮𐯯𐯰𐯱𐯲𐯳𐯴𐯵𐯶𐯷𐯸𐯹𐯺𐯻𐯼𐯽𐯾𐯿𐰀𐰁𐰂𐰃𐰄𐰅𐰆𐰇𐰈𐰉𐰊𐰋𐰌𐰍𐰎𐰏𐰐𐰑𐰒𐰓𐰔𐰕𐰖𐰗𐰘𐰙𐰚𐰛𐰜𐰝𐰞𐰟𐰠𐰡𐰢𐰣𐰤𐰥𐰦𐰧𐰨𐰩𐰪𐰫𐰬𐰭𐰮𐰯𐰰𐰱𐰲𐰳𐰴𐰵𐰶𐰷𐰸𐰹𐰺𐰻𐰼𐰽𐰾𐰿𐱀𐱁𐱂𐱃𐱄𐱅𐱆𐱇𐱈𐱉𐱊𐱋𐱌𐱍𐱎𐱏𐱐𐱑𐱒𐱓𐱔𐱕𐱖𐱗𐱘𐱙𐱚𐱛𐱜𐱝𐱞𐱟𐱠𐱡𐱢𐱣𐱤𐱥𐱦𐱧𐱨𐱩𐱪𐱫𐱬𐱭𐱮𐱯𐱰𐱱𐱲𐱳𐱴𐱵𐱶𐱷𐱸𐱹𐱺𐱻𐱼𐱽𐱾𐱿𐲀𐲁𐲂𐲃𐲄𐲅𐲆𐲇𐲈𐲉𐲊𐲋𐲌𐲍𐲎𐲏𐲐𐲑𐲒𐲓𐲔𐲕𐲖𐲗𐲘𐲙𐲚𐲛𐲜𐲝𐲞𐲟𐲠𐲡𐲢𐲣𐲤𐲥𐲦𐲧𐲨𐲩𐲪𐲫𐲬𐲭𐲮𐲯𐲰𐲱𐲲𐲳𐲴𐲵𐲶𐲷𐲸𐲹𐲺𐲻𐲼𐲽𐲾𐲿𐳀𐳁𐳂𐳃𐳄𐳅𐳆𐳇𐳈𐳉𐳊𐳋𐳌𐳍𐳎𐳏𐳐𐳑𐳒𐳓𐳔𐳕𐳖𐳗𐳘𐳙𐳚𐳛𐳜</li></ul>
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the objections process would have parameters set for who could object. Those suggested parameters are found within the Implementation Guidelines.

- iv. In reaching its decision about the recommendation, the Committee sought to be consistent with, for example, Article 3 (1) (f) of the 1988 European Union Trade Mark Directive 89/104/EEC and within Article 7 (1) (f) of the 1993 European Union Trade Mark Regulation 40/94. In addition, the phrasing "contrary to morality or public order and in particular of such a nature as to deceive the public" comes from Article 6quinques (B)(3) of the 1883 *Paris Convention*. The reference to the *Paris Convention* remains relevant to domain names even though, when it was drafted, domain names were completely unheard of.
- v. The concept of "morality" is captured in Article 19 United Nations Convention on Human Rights (<http://www.unhcr.ch/udhr/lang/eng.htm>) says "...Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." Article 29 continues by saying that "...In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society".
- vi. The EU Trade Mark Office's Examiner's guidelines provides assistance on how to interpret morality and deceit. "...Contrary to morality or public order. Words or images which are offensive, such as swear words or racially derogatory images, or which are blasphemous are not acceptable. There is a dividing line between this and words which might be considered in poor taste. The latter do not offend against this provision." The further element is deception of the public which is treated in the following way. "...Deceive the public. To deceive the public, is for instance as to the nature, quality or geographical origin. For example, a word may give rise to a real expectation of a particular locality which is untrue." For more information, see Sections 8.7 and 8.8 at <http://oami.europa.eu/en/mark/marque/direc.htm>
- vii. The UK Trade Mark office provides similar guidance in its Examiner's Guidance Manual. "Marks which offend fall broadly into three types: those with criminal connotations, those with religious connotations and explicit/taboo signs. Marks offending public policy are likely to offend accepted principles of morality, e.g. illegal drug terminology, although the question of public policy may not arise against marks offending accepted principles of morality, for example, taboo swear words. If a mark is merely distasteful, an objection is unlikely to be justified, whereas if it would cause outrage or would be likely significantly to undermine religious, family or social values, then an objection will be appropriate. Offence may be caused on matters of race, sex, religious belief or general matters of taste and decency. Care should be taken when words have a religious significance and which may provoke greater offence than mere distaste, or even outrage, if used to parody a religion or its values. Where a sign has a very sacred status to members of a religion, mere use may be enough to cause outrage." For more information, see <http://www.patent.gov.uk/tm/t-decisionmaking/t-law/t-law-manual.htm>
- viii. This recommendation has been the subject of detailed Committee and small group work in an attempt to reach consensus about both the text of the recommendation and the examples included as guidance about generally accepted legal norms. The work has been informed by detailed discussion within the GAC and through interactions between the GNSO Committee and the GAC.

**6. Recommendation 7 Discussion -- Applicants must be able to demonstrate their technical capability to run a registry operation for the purpose that the applicant sets out.**

- i. This recommendation is supported by all GNSO Constituencies and Ms Doria.
- ii. The Committee agreed that the technical requirements for applicants would include compliance with a minimum set of technical standards and that this requirement would be part of the new registry operator's contractual conditions included in the proposed base contract. The more detailed discussion about technical requirements has been moved to the contractual conditions section.
- iii. Reference was made to numerous Requests for Comment (RFCs) and other technical standards which apply to existing registry operators. For example, Appendix 7 of the June 2005 .net agreement<sup>[68]</sup> provides a comprehensive listing of technical requirements in addition to other technical specifications in other parts of the agreement. These requirements are consistent with that which is expected of all current registry operators. These standards would form the basis of any new top-level domain operator requirements.
- iv. This recommendation is referred to in two CISOs. "The ISPCP considers recommendations 7 and 8 to be fundamental. The technical, financial, organisational and operational capabilities of the applicant are the evaluators' instruments for preventing potential negative impact on a new string on the activities of our sector (and indeed of many other sectors)." The NCUC submitted "...we record that this must be limited to transparent, predictable and minimum technical requirements only. These must be published. They must then be adhered to neutrally, fairly and without discrimination."
- v. The GAC supported this direction in its Public Policy Principles 2.6, 2.10 and 2.11.

**7. Recommendation 8 Discussion -- Applicants must be able to demonstrate their financial and organisational operational capability.**

- i. This recommendation is supported by all GNSO Constituencies and accepted with concern by Ms Doria<sup>[69]</sup>.
- ii. The Committee discussed this requirement in detail and determined that it was reasonable to request this information from potential applicants. It was also consistent with past practices including the prior new TLD rounds in 2000 and 2003-2004; the .net and .org rebids and the conditions associated with ICANN registrar accreditation.

- iii. This is also consistent with best practice procurement guidelines recommended by the World Bank ([www.worldbank.org](http://www.worldbank.org)), the OECD ([www.oecd.org](http://www.oecd.org)) and the Asian Development Bank ([www.adb.org](http://www.adb.org)) as well as a range of federal procurement agencies such as the UK telecommunications regulator, Ofcom; the US Federal Communications Commission and major public companies.
- iv. The challenging aspect of this recommendation is to develop robust and objective criteria against which applicants can be measured, recognising a vast array of business conditions and models. This will be an important element of the ongoing development of the Implementation Plan.
- v. The ISPCP discussed the importance of this recommendation in its CIS, as found in Recommendation 7 above.
- vi. The NCUC's CIS addressed this recommendation by saying "...we support this recommendation to the extent that the criteria is truly limited to minimum financial and organizational operational capability...All criteria must be transparent, predictable and minimum. They must be published. They must then be adhered to neutrally, fairly and without discrimination."
- vii. The GAC echoed these views in its Public Policy Principle 2.5 that said "...the evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination. All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process."

**8. Recommendation 9 Discussion -- There must be a clear and pre-published process using objective and measurable criteria.**

- i. This recommendation is supported by all GNSO Constituencies and by Ms Doria. It is consistent with ICANN's previous TLD rounds in 2000 and 2003-2004 and with its re-bid of both the .net and .org registry contracts.
- ii. It is also consistent with ICANN's Mission and Core Values especially 7, 8 and 9 which address openness in decision-making processes and the timeliness of those processes.
- iii. The Committee decided that the "process" criteria for introducing new top-level domains would follow a pre-published application system including the levying of an application fee to recover the costs of the application process. This is consistent with ICANN's approach to the introduction of new TLDs in the previous 2000 and 2004 round for new top-level domains.
- iv. The RyC reiterated its support for this recommendation in its CIS. It said that "...this Recommendation is of major importance to the RyC because the majority of constituency members incurred unnecessarily high costs in previous rounds of new gTLD introductions as a result of excessively long time periods from application submittal until they were able to start their business. We believe that a significant part of the delays were related to selection criteria and processes that were too subjective and not very measurable. It is critical in our opinion that the process for the introduction of new gTLDs be predictable in terms of evaluation requirements and timeframes so that new applicants can properly scope their costs and develop reliable implementation plans." The NCUC said that "...we strongly support this recommendation and again stress the need for all criteria to be limited to minimum operational, financial, and technical considerations. We all stress the need that all evaluation criteria be objective and measurable."

**9. Recommendation 10 Discussion -- There must be a base contract provided to applicants at the beginning of the process.**

- i. This recommendation is supported by all GNSO Constituencies and by Ms Doria.
- ii. The General Counsel's office has been involved in discussions about the provision of a base contract which would assist applicants both during the application process and in any subsequent contract negotiations.
- iii. A framework for the base contract was developed for discussion at the June 2007 ICANN meeting in Puerto Rico. The base contract will not be completed until the policy recommendations are in place. Completion of the policy recommendations will enable the completion of a draft base contract that would be available to applicants prior to the start of the new gTLD process, that is, prior to the beginning of the four-month window preceding the application submittal period.
- iv. The RyC, in its CIS, said, "...like the comments for Recommendation 9, we believe that this recommendation will facilitate a more cost-effective and timely application process and thereby minimize the negative impacts of a process that is less well-defined and objective. Having a clear understanding of base contractual requirements is essential for a new gTLD applicant in developing a complete business plan."

**10. Recommendation 11 Discussion --** (This recommendation has been removed and is left intentionally blank. Note Recommendation 20 and its Implementation Guidelines).

**11. Recommendation 12 Discussion -- Dispute resolution and challenge processes must be established prior to the start of the process.**

- i. This recommendation is supported by all GNSO Constituencies and Ms Doria.
- ii. The Committee has provided clear direction on its expectations that all the dispute resolution and challenge processes would be established prior to the opening of the application round. The full system will be published prior to an application round starting. However, the finalisation of this process is contingent upon a completed set of recommendations being agreed; a public comment period and the final agreement of the ICANN Board.

- iii. The draft Implementation Plan in the Implementation Team *Discussion Points* document sets out the way in which the ICANN Staff proposes that disputes between applicants and challenge processes may be handled. Expert legal and other professional advice from, for example, auctions experts is being sought to augment the Implementation Plan.

#### **TERM OF REFERENCE THREE -- ALLOCATION METHODS**

##### **12. Recommendation 13 Discussion -- Applications must initially be assessed in rounds until the scale of demand is clear.**

- i. This recommendation is supported by all GNSO Constituencies and Ms Doria.
- ii. This recommendation sets out the principal allocation methods for TLD applications. The narrative here should be read in conjunction with the draft flowcharts and the draft Request for Proposals.
- iii. An application round would be opened on Day 1 and closed on an agreed date in the future with an unspecified number of applications to be processed within that round.
- iv. This recommendation may be amended, after an evaluation period and report that may suggest modifications to this system. The development of objective "success metrics" is a necessary part of the evaluation process that could take place within the new TLDs Project Office.
- v. The ISPCP expressed its support for this recommendation. Its CIS said that "...this is an essential element in the deployment of new gTLDs, as it enables any technical difficulties to be quickly identified and sorted out, working with reduced numbers of new strings at a time, rather than many all at once. Recommendation 18 on the use of IDNs is also important in preventing any negative impact on network operators and ISPs."

##### **13. Recommendation 20 Discussion -- An application will be rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be explicitly or implicitly targeted.**

- i. This recommendation is supported by the majority of GNSO Constituencies. Ms Doria supports the recommendation but has concerns about its implementation<sup>[70]</sup>. The NCUC has submitted a Minority Statement which is found in full in Annex C about the recommendation and its associated Implementation Guidelines F, H and P.
- ii. This recommendation was developed during the preparations for the Committee's 7 June 2007 conference call and during subsequent Committee deliberations. The intention was to factor into the process the very likely possibility of objections to applications from a wide variety of stakeholders.
- iii. The language used here is relatively broad and the implementation impact of the proposed recommendation is discussed in detail in the Implementation Team's *Discussion Points* document.
- iv. The NCUC's response to this recommendation in its earlier CIS says, in part, "...recommendation 20 swallows up any attempt to narrow the string criteria to technical, operational and financial evaluations. It asks for objections based on entirely subjective and unknowable criteria and for unlimited reasons and by unlimited parties." This view has, in part, been addressed in the Implementation Team's proposed plan but this requires further discussion and agreement by the Committee.

#### **TERM OF REFERENCE FOUR -- CONTRACTUAL CONDITIONS**

##### **14. Recommendation 14 Discussion -- The initial registry agreement term must be of a commercially reasonable length.**

- i. The remainder of the recommendations address Term of Reference Four on policies for contractual conditions and should be read in conjunction with Recommendation 10 on the provision of a base contract prior to the opening of an application round. The recommendation is supported by all GNSO Constituencies and Ms Doria.
- ii. This recommendation is consistent with the existing registry contract provisions found in, for example, the .com and .biz agreements.
- iii. These conditions would form the baseline conditions of term length for new TLD operators. It was determined that a term of ten years would reasonably balance the start up costs of registry operations with reasonable commercial terms.
- iv. The RyC commented on this recommendation in its CIS saying that "...the members of the RyC have learned first hand that operating a registry in a secure and stable manner is a capital intensive venture. Extensive infrastructure is needed both for redundant registration systems and global domain name constellations. Even the most successful registries have taken many years to recoup their initial investment costs. The RyC is convinced that these two recommendations [14 & 15] will make it easier for new applicants to raise the initial capital necessary and to continue to make investments needed to ensure the level of service expected by registrants and users of their TLDs. These two recommendations will have a very positive impact on new gTLD registries and in turn on the quality of the service they will be able to provide to the Internet community."

##### **15. Recommendation 15 -- There must be renewal expectancy.**

- i. This recommendation is consistent with the existing registry contract provisions found in, for example, the .com and .biz agreements and is supported by all Constituencies. Ms Doria supported the recommendation and provided the comments found in the footnote below.<sup>[71]</sup>
- ii. These conditions would form the baseline conditions of term length for new TLD operators. It was determined that a term of

ten years would reasonably balance the start up costs of registry operations with reasonable commercial terms.

iii. See the CIS comments from the RyC in the previous section.

**16. Recommendation 16 -- Registries must apply existing Consensus Policies[72] and adopt new Consensus Policies as they are approved.**

i. This recommendation is supported by all GNSO Constituencies and Ms Doria.

ii. The full set of existing ICANN registry contracts can be found here <http://www.icann.org/registries/agreements.htm> and ICANN's seven current Consensus Policies are found at <http://www.icann.org/general/consensus-policies.htm>.

iii. ICANN develops binding Consensus Policies through its policy development processes, in this case, through the GNSO[73].

**17. Recommendation 17 -- A clear compliance and sanctions process must be set out in the base contract which could lead to contract termination.**

i. This recommendation is supported by all GNSO Constituencies and Ms Doria.

ii. Referring to the recommendations on contractual conditions above, this section sets out the discussion of the policies for contractual conditions for new top-level domain registry operators. The recommendations are consistent with the existing provisions for registry operators which were the subject of detailed community input throughout 2006[74].

iii. The Committee developed its recommendations during the Brussels and Amsterdam face-to-face consultations, with assistance from the ICANN General Counsel's office. The General Counsel's office has also provided a draft base contract which will be completed once the policy recommendations are agreed. Reference should also be made to Recommendation 5 on reserved words as some of the findings could be part of the base contract.

iv. The Committee has focused on the key principles of consistency, openness and transparency. It was also determined that a scalable and predictable process is consistent with industry best practice standards for services procurement. The Committee referred in particular to standards within the broadcasting, telecommunications and Internet services industries to examine how regulatory agencies in those environments conducted, for example, spectrum auctions, broadcasting licence distribution and media ownership frameworks.

v. Since then ICANN has developed and published a new approach to its compliance activities. These are found on ICANN's website at <http://www.icann.org/compliance/> and will be part of the development of base contract materials.

vi. The Committee found a number of expert reports[75] beneficial. In particular, the World Bank report on mobile licensing conditions provides some guidance on best practice principles for considering broader market investment conditions. "...A major challenge facing regulators in developed and developing countries alike is the need to strike the right balance between ensuring certainty for market players and preserving flexibility of the regulatory process to accommodate the rapidly changing market, technological and policy conditions. As much as possible, policy makers and regulators should strive to promote investors' confidence and give incentives for long-term investment. They can do this by favouring the principle of 'renewal expectancy', but also by promoting regulatory certainty and predictability through a fair, transparent and participatory renewal process. For example, by providing details for license renewal or reissue, clearly establishing what is the discretion offered to the licensing body, or ensuring sufficient lead-times and transitional arrangements in the event of non-renewal or changes in licensing conditions. Public consultation procedures and guaranteeing the right to appeal regulatory decisions maximizes the prospects for a successful renewal process. As technological changes and convergence and technologically neutral approaches gain importance, regulators and policy makers need to be ready to adapt and evolve licensing procedures and practices to the new environment."

vii. The Recommendations which the Committee has developed with respect to the introduction of new TLDs are consistent with the World Bank principles.

**18. Recommendation 18 Discussion -- If an applicant offers an IDN service, then ICANN's IDN guidelines must be followed.**

i. This recommendation is supported by all GNSO Constituencies and Ms Doria. The introduction of internationalised domain names at the root presents ICANN with a series of implementation challenges. This recommendation would apply to any new gTLD (IDN or ASCII TLD) offering IDN services. The initial technical testing[76] has been completed and a series of live root tests will take place during the remainder of 2007.

ii. The Committee recognises that there is ongoing work in other parts of the ICANN organisation that needs to be factored into the application process that will apply to IDN applications. The work includes the President's Committee on IDNs and the GAC and ccNSO joint working group on IDNs.

**19. Recommendation 19 Discussion -- Registries must use only ICANN accredited registrars in registering domain names and may not discriminate among such accredited registrars.**

i. This recommendation is supported by all GNSO Constituencies and Ms Doria.

ii. There is a long history associated with the separation of registry and registrar operations for top-level domains. The structural separation of VeriSign's registry operations from Network Solutions registrar operations explains much of the ongoing policy to require the use of ICANN accredited registrars.

iii. In order to facilitate the stable and secure operation of the DNS, the Committee agreed that it was prudent to continue the current requirement that registry operators be obliged to use ICANN accredited registrars.

- iv. ICANN's Registrar Accreditation Agreement has been in place since 2001[77]. Detailed information about the accreditation of registrars can be found on the ICANN website[78]. The accreditation process is under active discussion but the critical element of requiring the use of ICANN accredited registrars remains constant.
- v. In its CIS, the RyC noted that "...the RyC has no problem with this recommendation for larger gTLDs; the requirement to use accredited registrars has worked well for them. But it has not always worked as well for very small, specialized gTLDs. The possible impact on the latter is that they can be at the mercy of registrars for whom there is no good business reason to devote resources. In the New gTLD PDP, it was noted that this requirement would be less of a problem if the impacted registry would become a registrar for its own TLD, with appropriate controls in place. The RyC agrees with this line of reasoning but current registry agreements forbid registries from doing this. Dialog with the Registrars Constituency on this topic was initiated and is ongoing, the goal being to mutually agree on terms that could be presented for consideration and might provide a workable solution."

#### NEXT STEPS

1. Under the GNSO's Policy Development Process, the production of this *Final Report* completes Stage 9. The next steps are to conduct a twenty-day public comment period running from 10 August to 30 August 2007. The GNSO Council is due to meet on 6 September 2007 to vote on the package of principles, policy recommendations and implementation guidelines.
2. After the GNSO Council have voted the Council Report to the Board is prepared. The GNSO's PDP guidelines stipulate that "the Staff Manager will be present at the final meeting of the Council, and will have five (5) calendar days after the meeting to incorporate the views of the Council into a report to be submitted to the Board (the "Board Report"). The Board Report must contain at least the following:
  - a. A clear statement of any Supermajority Vote recommendation of the Council;
  - b. If a Supermajority Vote was not reached, a clear statement of all positions held by Council members. Each statement should clearly indicate (i) the reasons underlying each position and (ii) the constituency(ies) that held the position;
  - c. An analysis of how the issue would affect each constituency, including any financial impact on the constituency;
  - d. An analysis of the period of time that would likely be necessary to implement the policy;
  - e. The advice of any outside advisors relied upon, which should be accompanied by a detailed statement of the advisor's (i) qualifications and relevant experience; and (ii) potential conflicts of interest;
  - f. The Final Report submitted to the Council; and
  - g. A copy of the minutes of the Council deliberation on the policy issue, including the all opinions expressed during such deliberation, accompanied by a description of who expressed such opinions.
3. It is expected that, according to the Bylaws, "...The Board will meet to discuss the GNSO Council recommendation as soon as feasible after receipt of the Board Report from the Staff Manager. In the event that the Council reached a Supermajority Vote, the Board shall adopt the policy according to the Council Supermajority Vote recommendation unless by a vote of more than sixty-six (66%) percent of the Board determines that such policy is not in the best interests of the ICANN community or ICANN. In the event that the Board determines not to act in accordance with the Council Supermajority Vote recommendation, the Board shall (i) articulate the reasons for its determination in a report to the Council (the "Board Statement"); and (ii) submit the Board Statement to the Council. The Council shall review the Board Statement for discussion with the Board within twenty (20) calendar days after the Council's receipt of the Board Statement. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board will discuss the Board Statement. At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its recommendation, and communicate that conclusion (the "Supplemental Recommendation") to the Board, including an explanation for its current recommendation. In the event that the Council is able to reach a Supermajority Vote on the Supplemental Recommendation, the Board shall adopt the recommendation unless more than sixty-six (66%) percent of the Board determines that such policy is not in the interests of the ICANN community or ICANN. In any case in which the Council is not able to reach Supermajority, a majority vote of the Board will be sufficient to act. When a final decision on a GNSO Council Recommendation or Supplemental Recommendation is timely, the Board shall take a preliminary vote and, where practicable, will publish a tentative decision that allows for a ten (10) day period of public comment prior to a final decision by the Board."
4. The final stage in the PDP is the implementation of the policy which is also governed by the Bylaws as follows, "...Upon a final decision of the Board, the Board shall, as appropriate, give authorization or direction to the ICANN staff to take all necessary steps to implement the policy."

#### Annex A – NCUC Minority Statement: Recommendation 6

STATEMENT OF DISSENT ON RECOMMENDATION #6 OF

## GNSO's NEW GTLD REPORT FROM

## the Non-Commercial Users Constituency (NCUC)

20 July 2007

NCUC supports most of the recommendations in the GNSO's Final Report, but Recommendation #6 is one we cannot support.[79]

We oppose Recommendation #6 for the following reasons:

- 1) It will completely undermine ICANN's efforts to make the gTLD application process predictable, and instead make the evaluation process arbitrary, subjective and political;
- 2) It will have the effect of suppressing free and diverse expression;
- 3) It exposes ICANN to litigation risks;
- 4) It takes ICANN too far away from its technical coordination mission and into areas of legislating morality and public order.

We also believe that the objective of Recommendation #6 is unclear, in that much of its desirable substance is already covered by Recommendation #3. At a minimum, we believe that the words "relating to morality and public order" must be struck from the recommendation.

#### 1) Predictability, Transparency and Objectivity

Recommendation #6 poses severe implementation problems. It makes it impossible to achieve the GNSO's goals of predictable and transparent evaluation criteria for new gTLDs.

Principle 1 of the New gTLD Report states that the evaluation process must be "predictable," and Recommendation #1 states that the evaluation criteria must be transparent, predictable, and fully available to applicants prior to their application.

NCUC strongly supports those guidelines. But no gTLD applicant can possibly know in advance what people or governments in a far away land will object to as "immoral" or contrary to "public order." When applications are challenged on these grounds, applicants cannot possibly know what decision an expert panel – which will be assembled on an ad hoc basis with no precedent to draw on – will make about it.

Decisions by expert panels on "morality and public order" *must* be subjective and arbitrary, because there is no settled and well-established international law regarding the relationship between TLD strings and morality and public order. There is no single "community standard" of morality that ICANN can apply to all applicants in every corner of the globe. What is considered "immoral" in Teheran may be easily accepted in Los Angeles or Stockholm; what is considered a threat to "public order" in China and Russia may not be in Brazil and Qatar.

#### 2) Suppression of expression of controversial views

gTLD applicants will respond to the uncertainty inherent in a vague "morality and public order" standard and lack of clear standards by suppressing and avoiding any ideas that might generate controversy. Applicants will have to invest sizable sums of money to develop a gTLD application and see it through the ICANN process. Most of them will avoid risking a challenge under Recommendation #6. In other words, the presence of Recommendation #6 will result in self-censorship by most applicants.

That policy would strip citizens everywhere of their rights to express controversial ideas because someone else finds them offensive. This policy recommendation ignores international and national laws, in particular freedom of expression guarantees that permit the expression of "immoral" or otherwise controversial speech on the Internet.

#### 3) Risk of litigation

Some people in the ICANN community are under the mistaken impression that suppressing controversial gTLDs will protect it from litigation. Nothing could be further from the truth. By introducing subjective and culturally divisive standards into the evaluation process Recommendation #6 will increase the likelihood of litigation.

ICANN operates under authority from the US Commerce Department. It is undisputed that the US Commerce Department is prohibited from censoring the expression of US citizens in the manner proposed by Recommendation #6. The US Government cannot "contract away" the constitutional protections of its citizens to ICANN any more than it can engage in the censorship itself.

Adoption of Recommendation #6 invites litigation against ICANN to determine whether its censorship policy is compatible with the US First Amendment. An ICANN decision to suppress a gTLD string that would be permitted under US law could and probably would lead to legal challenges to the decision as a form of US Government action.

If ICANN left the adjudication of legal rights up to courts, it could avoid the legal risk and legal liability that this policy of censorship brings upon it.

#### 4) ICANN's mission and core values

Recommendation #6 exceeds the scope of ICANN's technical mission. It asks ICANN to create rules and adjudicate disputes about what is permissible expression. It enables it to censor expression in domain names that would be lawful in some countries. It would require ICANN and "expert panels" to make decisions about permitting top-level domain names based on arbitrary "morality" judgments and other subjective criteria. Under Recommendation #6, ICANN will evaluate domain names based on ideas about "morality and public order" -- concepts for which there are varying interpretations, in both law and culture, in various parts of the world. Recommendation #6 risks turning ICANN into the arbiter of "morality" and "appropriate" public policy through global rules.

This new role for ICANN conflicts with its intended narrow technical mission, as embodied in its mission and core values. ICANN holds no legitimate authority to regulate in this entirely non-technical area and adjudicate the legal rights of others. This recommendation takes the adjudication of people's rights to use domain names out of the hands of democratically elected representatives and into the hands of "expert panels" or ICANN staff and board with no public accountability.

Besides exceeding the scope of ICANN's authority, Recommendation #6 seems unsure of its objective. It mandates "morality and public order" in domain names, but then lists, as examples of the type of rights to protect, the WTO TRIPS Agreement and all 24 World Intellectual Property (WIPO) Treaties, which deal with economic and trade rights, and have little to do with "morality and public order". Protection for intellectual property rights was fully covered in Recommendation #3, and no explanation has been provided as to why intellectual property rights would be listed again in a recommendation on "morality and public order", an entirely separate concept.

In conclusion Recommendation #6 exceeds ICANN's authority, ignores Internet users' free expression rights, and its adoption would impose an enormous burden on and liability for ICANN. It should not be adopted by the Board of Directors in the final policy decision for new gTlds.

**Annex B – Nominating Committee Appointee Avri Doria[80]: Individual Comments**

Comments from Avri Doria

The "Personal level of support" indications fall into 3 categories:

- I Support: these are principles, recommendations or guidelines that are compatible with my personal opinions
- I Support with concerns: While these principles, recommendations and guidelines are not incompatible with my personal opinions, I have some concerns about them.
- I Accept with concern: these recommendations and guidelines do not necessarily correspond to my personal opinions, but I am able to accept them in that they have the broad support of the committee. I do, however, have concerns with these recommendations and guideline.

I believe these comments are consistent with comments I have made throughout the process and do not constitute new input.

**Principles**

#	Personal level of support	Explanation
A	Support	
B	Support with concerns	While I strongly support the introduction of IDN TLDS, I am concerned that the unresolved issues with IDN ccTLD equivalents may interfere with the introduction of IDN TLDS. I am also concerned that some of these issues could impede the introduction of some new ASCII TLDs dealing with geographically related identifiers.
C	Support	
D	Support with concerns	While I favor the establishment of a minimum set of necessary technical criteria, I am concerned that this set actually be the basic minimum set necessary to protect the stability, security and global interoperability.
E-G	Support	

**Recommendations**

#	Level of support	Explanation
1	Support	
2	Accept with concern	<p>My concern involves using definitions that rely on legal terminology established for trademarks for what I believe should be a policy based on technical criteria.</p> <p>I In the first instance I believe that this is essentially a technical issue that should have been resolved with reference to typography, homologues, orthographic neighbourhood, transliteration and other technically defined attributes of a name that would make it unacceptable. There is a large body of scientific and technical knowledge and description in this field that we could have drawn on.</p> <p>I By using terms that rely on the legal language of trademark law, I believe we have created an implicit redundancy between recommendations 2 and 3. I.e., I believe both 2 and 3 can be used to protect trademarks and other intellectual property rights, and while 3 has specific</p>

		<p>limitations, 2 remains open to full and varied interpretation.</p> <p>I As we begin to consider IDNs, I am concerned that the interpretations of confusingly similar may be used to eliminate many potential TLDs based on translation. That is, when a translation may have the same or similar meaning to an existing TLD, that the new name may be eliminated because it is considered confusing to users who know both languages.</p>
3	Support with concerns	<p>My first concern relates to the protection of what can be called the linguistic commons. While it is true that much of trademark law and practice does protect general vocabulary and common usage from trademark protection, I am not sure that this is always the case in practice.</p> <p>I am also not convinced that trademark law and policy that applies to specific product type within a specific locale is entirely compatible with a general and global naming system.</p>
4	Support	
5	Support with concerns	<p>Until such time as the technical work on IDNAbis is completed, I am concerned about establishing reserved name rules connected to IDNs. My primary concern involves policy decisions made in ICANN for reserved names becoming hard coded in the IDNAbis technical solution and thus becoming technical constraints that are no longer open to future policy reconsideration.</p>
6	Accept with concern	<p>My primary concern focuses on the term 'morality'. While public order is frequently codified in national laws and occasionally in international law and conventions, the definition of what constitutes morality is not generally codified, and when it is, I believe it could be referenced as public order.</p> <p>This concern is related to the broad set of definitions used in the world to define morality. By including morality in the list of allowable exclusions we have made the possible exclusion list indefinitely large and have subjected the process to the consideration of all possible religious and ethical systems. ICANN or the panel of reviewers will also have to decide between different sets of moral principles, e.g., a morality that holds that people should be free to express themselves in all forms of media and those who believe that people should be free from exposure to any expression that is prohibited by their faith or moral principles. This recommendation will also subject the process to the fashion and occasional demagoguery of political correctness. I do not understand how ICANN or any expert panel will be able to judge that something should be excluded based on reasons of morality without defining, at least de-facto, an ICANN definition of morality? And while I am not a strict constructionist and sometimes allow for the broader interpretation of ICANN's mission, I do not believe it includes the definition of a system of morality.</p>
7	Support	
8	Accept with concern	<p>While I accept that a prospective registry must show adequate operational capability, creating a financial criteria is of concern. There may be many different ways of satisfying the requirement for operational capability and stability that may not be demonstrable in a financial statement or traditional business plan. E.g., in the case of an less developed community, the registry may rely on volunteer effort from knowledgeable technical experts.</p> <p>Another concern I have with financial requirements and high application fees is that they may act to discourage applications from developing nations or indigenous and minority peoples that have a different set of financial opportunities or capabilities then those recognized as acceptable within an expensive and highly developed region such as Los Angeles or Brussels.</p>
9,10, 12-14	Support	
15	Support with concerns	<p>In general I support the idea that a registry that is doing a good job should have the expectancy of renewal. I do, however, believe that a registry, especially a registry with general market dominance, or specific or local market dominance, should be subject to comment from the relevant user public and to evaluation of that public comment before renewal. When performance is satisfactory, there should be an expectation of renewal. When performance is not satisfactory, there should be some procedure for correcting the situation before renewal.</p>
16-19	Support	
20	Support with concerns	<p>In general I support the policy though I do have concerns about the implementation which I discuss below in relation to IG (P)</p>

**Implementation Guidelines**

#	Level of	Explanation
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	support	
A-E	Support	
F	Accept with concern	In designing a New gTLD process, one of the original design goals had been to design a predictable and timely process that did not include the involvement of the Board of Directors except for very rare and exceptional cases and perhaps in the due diligence check of a final approval. My concern is that the use of Board in step (iii) may make them a regular part of many of the application procedure and may overload both the Board and the process. If every dispute can fall through to Board consideration in the process sieve, then the incentive to resolve the dispute earlier will be lessened.
G-M	Support	
N	Support with concerns	I strongly support the idea of financial assistance programs and fee reduction for less developed communities. I am concerned that not providing pricing that enables applications from less developed countries and communities may serve to increase the divide between the haves and the have nots in the Internet and may lead to a foreign 'land grab' of choice TLD names, especially IDN TLD names in a new form of resource colonialism because only those with well developed funding capability will be able to participate in the process as currently planned.
O	Support	
P	Support with concerns	<p>While I essentially agree with the policy recommendation and its implementation guideline, its social justice and fairness depends heavily on the implementation issues. While the implementation details are not yet settled, I have serious concerns about the published draft plans of the ICANN staff in this regard. The current proposal involves using fees to prevent vexatious or unreasonable objections. In my personal opinion this would be a cause of social injustice in the application of the policy as it would prejudice the objection policy in favor of the rich. I also believe that an objection policy based on financial means would allow for well endowed entities to object to any term they found objectionable, hence enabling them to be as vexatious as they wish to be.</p> <p>In order for an objection system to work properly, it must be fair and it must allow for any applicant to understand the basis on which they might have to answer an objection. If the policy and implementation are clear about objections only being considered when they can be shown to cause irreparable harm to a community then it may be possible to build a just process. In addition to the necessity for there to be strict filters on which potential objections are actually processed for further review by an objections review process, it is essential that an external and impartial professional review panel have a clear basis for judging any objections.</p> <p>I do not believe that the ability to pay for a review will provide a reasonable criteria, nor do I believe that financial barriers are an adequate filter for stopping vexatious or unreasonable objections though they are a sufficient barrier for the poor.</p> <p>I believe that ICANN should investigate other methods for balancing the need to allow even the poorest to raise an issue of irreparable harm while filtering out unreasonable disputes. I believe, as recommend in the Reserved Names Working group report, that the ALAC and GAC may be an important part of the solution. IG (P) currently includes support for treating ALAC and GAC as established institutions in regard to raising objections to TLD concerns. I believe this is an important part of the policy recommendation and should be retained in the implementation. I believe that it should be possible for the ALAC or GAC, through some internal procedure that they define, to take up the cause of the individual complainant and to request a review by the external expert review panel. Some have argued that this is unacceptable because it operationalizes these Advisory Committees. I believe we do have precedence for such an operational role for volunteers within ICANN and that it is in keeping with their respective roles and responsibilities as representatives of the user community and of the international community of nations. I strongly recommend that such a solution be included in the Implementation of the New gTLD process.</p>
Q	Support	

**Annex C – NCUC Minority Statement: Recommendation 20 and Implementation Guidelines F, H & P**

STATEMENT OF DISSENT ON RECOMMENDATION #20 &  
 IMPLEMENTATION GUIDELINES F, H, & P IN THE  
 GNSO NEW GTLD COMMITTEE'S FINAL REPORT  
 FROM THE  
 NON-COMMERCIAL USERS CONSTITUENCY (NCUC)

**Text of Recommendation #20:**

"An application will be rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be explicitly or implicitly targeted."

**Text of Implementation Guideline F:**

If there is contention for strings, applicants may:

- i) resolve contention between them within a pre-established timeframe
- ii) if there is no mutual agreement, a claim to support a community by one party will be a reason to award priority to that application. If there is no such claim, and no mutual agreement a process will be put in place to enable efficient resolution of contention and;
- iii) the ICANN Board may be used to make a final decision, using advice from staff and expert panels.

**Text of Implementation Guideline H:**

External dispute providers will give decisions on complaints.

**Text of Implementation Guideline P:**

The following process, definitions, and guidelines refer to Recommendation 20.

**Process**

Opposition must be objection based.

Determination will be made by a dispute resolution panel constituted for the purpose.

The objector must provide verifiable evidence that it is an established institution of the community (perhaps like the RSTEP pool of panelists from which a small panel would be constituted for each objection).

**Guidelines**

The task of the panel is the determination of substantial opposition.

**a) substantial**

In determining substantial the panel will assess the following: significant portion, community, explicitly targeting, implicitly targeting, established institution, formal existence, detriment.

**b) significant portion:**

In determining significant portion the panel will assess the balance between the level of objection submitted by one or more established institutions and the level of support provided in the application from one or more established institutions. The panel will assess significance proportionate to the explicit or implicit targeting.

**c) community**

Community should be interpreted broadly and will include for example an economic sector, a cultural community, or a linguistic community. It may also be a closely related community which believes it is impacted.

**d) explicitly targeting**

Explicitly targeting means there is a description of the intended use of the TLD in the application.

**e) implicitly targeting**

Implicitly targeting means that the objector makes an assumption of targeting or that the objector believes there may be confusion by users over its intended use.

**f) established institution**

An institution that has been in formal existence for at least 5 years. In exceptional cases, standing may be granted to an institution that has been in existence for fewer than 5 years. Exceptional circumstance include but are not limited to reorganisation, merger, or an inherently younger community. The following ICANN organizations are defined as established institutions: GAC, ALAC, GNSO, ccNSO, ASO.

**g) formal existence**

Formal existence may be demonstrated by: appropriate public registration, public historical evidence, validation by a government, intergovernmental organization, international treaty organisation or similar.

h) detriment

<< A >> Evidence of detriment to the community or to users more widely must be provided.

<< B >> [A likelihood of detriment to the community or to users more widely must be provided.]

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**Recommendation #20**

The Non-Commercial Users Constituency (NCUC) Dissenting Statement on Recommendation #20 of the New GTLD Committee's Final Report<sup>[81]</sup> should be read in combination with Implementation Guidelines F, H & P, which detail the implementation of Recommendation #20. This statement should also be read in conjunction with its statement<sup>[82]</sup> of 13 June 2007 on the committee's draft report.

NCUC cannot support the committee's proposal for ICANN to establish a broad objection and rejection process for domain names that empowers ICANN and its "experts" to adjudicate the legal rights of domain name applicants (and objectors). The proposal would also empower ICANN and its "experts" to invent entirely new rights to domain names that do not exist in law and that will compete with existing legal rights to domains.

However "good-intentioned", the proposal would inevitably set up a system that decides legal rights based on subjective beliefs of "expert panels" and the amount of insider lobbying. The proposal would give "established institutions" veto power over applications for domain names to the detriment of innovators and start-ups. The proposal is further flawed because it makes no allowances for generic words to which no community claims exclusive "ownership" of. Instead, it wants to assign rights to use language based on subjective standards and will over-regulate to the detriment of competition, innovation, and free expression.

There is no limitation on the type of objections that can be raised to kill a domain name, no requirement that actual harm be shown to deny an application, and no recourse for the wrongful denial of legal rights by ICANN and its experts under this proposal. An applicant must be able to appeal decisions of ICANN and its experts to courts, who have more competence and authority to decide the applicant's legal rights. Legal due process requires maintaining a right to appeal these decisions to real courts.

The proposal is hopelessly flawed and will result in the improper rejection of many legitimate domain names. The reasons permitted to object to a domain are infinite in number. Anyone may make an objection; and an application will automatically be rejected upon a very low threshold of "detriment" or an even lower standard of "a likelihood of detriment" to anyone. Not a difficult bar to meet.

If ICANN attempted to put this policy proposal into practice it would intertwine itself in general policy debates, cultural clashes, business feuds, religious wars, and national politics, among a few of the disputes ICANN would have to rule on through this domain name policy.

The proposal operates under false assumptions of "communities" that can be defined, and that parties can be rightfully appointed representatives of "the community" by ICANN. The proposal gives preference to "established institutions" for domain names, and leaves applicants' without the backing of "established institutions" with little right to a top-level domain. The proposal operates to the detriment of small-scale start-ups and innovators who are clever enough to come up with an idea for a domain first, but lack the insider-connections and financial resources necessary to convince an ICANN panel of their worthiness.

It will be excessively expensive to apply for either a controversial or a popular domain name, so only well-financed "established institutions" will have both the standing and financial wherewithal to be awarded a top-level domain. The proposal privileges who is awarded a top-level domain, and thus discourages diversity of thought and the free flow of information by making it more difficult to obtain information on controversial ideas or from innovative new-comers.

**Implementation Guideline F**

NCUC does not agree with the part of Implementation Guideline F that empowers ICANN identified "communities" to support or oppose applications. Why should all "communities" agree before a domain name can be issued? How to decide who speaks for a "community"?

NCUC also notes that ICANN's Board of Directors would make the final decisions on applications and thus the legal rights of applicants under proposed IG-F. ICANN Board Members are not democratically elected, accountable to the public in any meaningful way, or trained in the adjudication of legal rights. Final decisions regarding legal rights should come from legitimate law-making processes, such as courts.

"Expert panels" or corporate officers are not obligated to respect an applicant's free expression rights and there is no recourse for a decision by the panel or ICANN for rights wrongfully denied. None of the "expert" panelists are democratically elected, nor accountable to the public for their decisions. Yet they will take decisions on the boundaries between free expression and trademark rights in domain names; and "experts" will decide what ideas are too controversial to be permitted in a domain name under this process.

**Implementation Guideline H**

Implementation Guideline H recommends a system to adjudicate legal rights that exists entirely outside of legitimate democratic law-making processes. The process sets up a system of unaccountable "private law" where "experts" are free to pick and choose favored laws, such as trademark rights, and ignore disfavored laws, such as free expression guarantees.

IG-H operates under the false premise that external dispute providers are authorized to adjudicate the legal rights of domain name applicants and objectors. It further presumes that such expert panels will be qualified to adjudicate the legal rights of

applicants and others. But undertaking the creation of an entirely new international dispute resolution process for the adjudication of legal rights and the creation of new rights is not something that can be delegated to a team of experts. Existing international law that takes into account conflict of laws, choice of laws, jurisdiction, standing, and due process must be part of any legitimate process; and the applicant's legal rights including freedom of expression rights must be respected in the process.

#### Implementation Guideline P

"The devil is in the details" of Implementation Guideline P as it describes in greater detail the proposed adversarial dispute process to adjudicate legal rights to top-level domain names in Recommendation #20. IG-P mandates the rejection of an application if there is "substantial opposition" to it according to ICANN's expert panel. But "substantial" is defined in such a way so as to actually mean "insubstantial" and as a result many legitimate domain names would be rejected by such an extremely low standard for killing an application.

Under IG-P, opposition against and support for an application must be made by an "established institution" for it to count as "significant", again favoring major industry players and mainstream cultural institutions over cultural diversity, innovative individuals, small niche, and medium-sized Internet businesses.

IG-P states that "community" should be interpreted broadly, which will allow for the maximum number of objections to a domain name to count against an application. It includes examples of "the economic sector, cultural community or linguistic community" as those who have a right to complain about an application. It also includes any "related community which believes it is impacted." So anyone who claims to represent a community and believes to be impacted by a domain name can file a complaint and have standing to object to another's application.

There is no requirement that the objection be based on legal rights or the operational capacity of the applicant. There is no requirement that the objection be reasonable or the belief about impact to be reasonable. There is no requirement that the harm be actual or verifiable. The standard for "community" is entirely subjective and based on the personal beliefs of the objector.

The definition of "implicitly targeting" further confirms this subjective standard by inviting objections where "the objector makes the assumption of targeting" and also where "the objector believes there may be confusion by users". Such a subjective process will inevitably result in the rejection of many legitimate domain names.

Picking such a subjective standard conflicts with Principle A in the Final Report that states domain names must be introduced in a "predictable way", and also with Recommendation 1 that states "All applicants for a new gTLD registry should be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process." The subjectivity and unpredictability invited into the process by Recommendation #20 turn Principle A and Recommendation 1 from the same report upside down.

Besides the inherent subjectivity, the standard for killing applications is remarkably low. An application need not be intended to serve a particular community for "community-based" objections to kill the application under the proposal. Anyone who believed that he or she was part of the targeted community or who believes others face "detriment" have standing to object to a domain name, and the objection weighs in favor of "significant opposition". This standard is even lower than the "reasonable person" standard, which would at least require that the belief be "reasonable" for it to count against an applicant. The proposed standard for rejecting domains is so low it even permits unreasonable beliefs about a domain name to weigh against an applicant.

If a domain name does cause confusion, existing trademark law and unfair competition law have dealt with it for years and already balanced intellectual property rights against free expression rights in domain names. There is neither reason nor authority for ICANN processes to overtake the adjudication of legal rights and invite unreasonable and illegitimate objections to domain names.

IG-P falsely assumes that the number of years in operation is indicative of one's right to use language. It privileges entities over 5 years old with objection rights that will effectively veto innovative start-ups who cannot afford the dispute resolution process and will be forced to abandon their application to the incumbents.

IG-P sets the threshold for harm that must be shown to kill an application for a domain name remarkably low. Indeed harm need not be actual or verified for an application to be killed based on "substantial opposition" from a single objector.

Whether the committee selects the unbounded definition for "detriment" that includes a "likelihood of detriment" or the narrower definition of "evidence of detriment" as the standard for killing an application for a domain name is largely irrelevant. The difference is akin to re-arranging the deck chairs on the Titanic. ICANN will become bogged down with the approval of domain names either way, although it is worth noting that "likelihood of detriment" is a very long way from "substantial harm" and an easy standard to meet, so will result in many more domain names being rejected.

The definitions and guidelines detailed in IG-P invite a lobby-fest between competing businesses, instill the "heckler's veto" into domain name policy, privilege incumbents, price out of the market non-commercial applicants, and give third-parties who have no legal rights to domain names the power to block applications for those domains. A better standard for killing an application for non-technical reasons would be for a domain name to be shown to be illegal in the applicant's jurisdiction before it can be rejected.

In conclusion, the committee's recommendation for domain name objection and rejection processes are far too broad and unwieldy to be put into practice. They would stifle freedom of expression, innovation, cultural diversity, and market competition. Rather than follow existing law, the proposal would set up an illegitimate process that usurps jurisdiction to adjudicate peoples' legal rights (and create new rights) in a process designed to favor incumbents. The adoption of this "free-for-all" objection and rejection process will further call into question ICANN's legitimacy to govern and its ability to serve the global public interest that respects the rights of all citizens.

NCUC respectfully submits that ICANN will best serve the global public interest by resisting the temptation to stray from its

technical mandate and meddle in international lawmaking as proposed by Rec. #20 and IG-F, IG-H, and IG-P of the New GTLD Committee Final Report.

#### REFERENCE MATERIAL -- GLOSSARY[83]

TERM	ACRONYM & EXPLANATION
A-label	The A-label is what is transmitted in the DNS protocol and this is the ASCII-compatible (ACE) form of an IDNA string; for example "xn--11b5bs1di".
ASCII Compatible Encoding	ACE  ACE is a system for encoding Unicode so each character can be transmitted using only the letters a-z, 0-9 and hyphens. Refer also to <a href="http://www.ietf.org/rfc/rfc3467.txt?number=3467">http://www.ietf.org/rfc/rfc3467.txt?number=3467</a>
American Standard Code for Information Exchange	ASCII  ASCII is a common numerical code for computers and other devices that work with text. Computers can only understand numbers, so an ASCII code is the numerical representation of a character such as 'a' or '@'. See above referenced RFC for more information.
Advanced Research Projects Agency	ARPA  <a href="http://www.darpa.mil/body/arpa_darpa.html">http://www.darpa.mil/body/arpa_darpa.html</a>
Commercial & Business Users Constituency	CBUC  <a href="http://www.bizconst.org/">http://www.bizconst.org/</a>
Consensus Policy	A defined term in all ICANN registry contracts usually found in Article 3 (Covenants).  See, for example, <a href="http://www.icann.org/tlds/agreements/biz/registry-agmt-08dec06.htm">http://www.icann.org/tlds/agreements/biz/registry-agmt-08dec06.htm</a>
Country Code Names Supporting Organization	ccNSO  <a href="http://ccnso.icann.org/">http://ccnso.icann.org/</a>
Country Code Top Level Domain	ccTLD  Two letter domains, such as .uk (United Kingdom), .de (Germany) and .jp (Japan) (for example), are called country code top level domains (ccTLDs) and correspond to a country, territory, or other geographic location. The rules and policies for registering domain names in the ccTLDs vary significantly and ccTLD registries limit use of the ccTLD to citizens of the corresponding country.  Some ICANN-accredited registrars provide registration services in the ccTLDs in addition to registering names in .biz, .com, .info, .name, .net and .org, however, ICANN does not specifically accredit registrars to provide ccTLD registration services.  For more information regarding registering names in ccTLDs, including a complete database of designated ccTLDs and managers, please refer to <a href="http://www.iana.org/cctld/cctld.htm">http://www.iana.org/cctld/cctld.htm</a> .
Domain Names	The term <b>domain name</b> has multiple related meanings: A name that identifies a computer or computers on the internet. These names appear as a component of a <b>Web site's URL</b> , e.g. <a href="http://www.wikipedia.org">www.wikipedia.org</a> . This type of domain name is also called a <b>hostname</b> .  The product that <b>Domain name registrars</b> provide to their customers. These names are often called <b>registered domain names</b> .  Names used for other purposes in the <b>Domain Name System (DNS)</b> , for example the special name which follows the @ sign in an <b>email address</b> , or the <b>Top-level domains</b> like .com, or the names used by the <b>Session Initiation Protocol (VoIP)</b> , or <b>DomainKeys</b> .  <a href="http://en.wikipedia.org/wiki/Domain_names">http://en.wikipedia.org/wiki/Domain_names</a>
Domain Name System	The Domain Name System (DNS) helps users to find their way around the Internet. Every computer on the Internet has a unique address - just like a telephone number - which is a rather complicated string of numbers. It is called its "IP address" (IP stands for "Internet Protocol"). IP Addresses are hard to remember. The DNS makes using the Internet easier by allowing a familiar string of letters (the "domain name") to be used instead of the arcane IP address. So instead of typing 207.151.159.3, you can type <a href="http://www.internic.net">www.internic.net</a> . It is a "mnemonic" device that makes addresses easier to remember.

Generic Top Level Domain	<p>gTLD</p> <p>Most TLDs with three or more characters are referred to as "generic" TLDs, or "gTLDs". They can be subdivided into two types, "sponsored" TLDs (sTLDs) and "unsponsored TLDs (uTLDs), as described in more detail below.</p> <p>In the 1980s, seven gTLDs (.com, .edu, .gov, .int, .mil, .net, and .org) were created. Domain names may be registered in three of these (.com, .net, and .org) without restriction; the other four have limited purposes.</p> <p>In 2001 &amp; 2002 four new unsponsored TLDs (.biz, .info, .name, and .pro) were introduced. The other three new TLDs (.aero, .coop, and .museum) were sponsored.</p> <p>Generally speaking, an unsponsored TLD operates under policies established by the global Internet community directly through the ICANN process, while a sponsored TLD is a specialized TLD that has a sponsor representing the narrower community that is most affected by the TLD. The sponsor thus carries out delegated policy-formulation responsibilities over many matters concerning the TLD.</p>
Governmental Advisory Committee	<p>GAC</p> <p><a href="http://gac.icann.org/web/index.shtml">http://gac.icann.org/web/index.shtml</a></p>
Intellectual Property Constituency	<p>IPC</p> <p><a href="http://www.ipconstituency.org/">http://www.ipconstituency.org/</a></p>
Internet Service & Connection Providers Constituency	<p>ISPCP</p>
Internationalized Domain Names	<p>IDNs</p> <p>IDNs are domain names represented by local language characters. These domain names may contain characters with diacritical marks (required by many European languages) or characters from non-Latin scripts like Arabic or Chinese.</p>
Internationalized Domain Names in Application	<p>IDNA</p> <p>IDNA is a protocol that makes it possible for applications to handle domain names with non-ASCII characters. IDNA converts domain names with non-ASCII characters to ASCII labels that the DNS can accurately understand. These standards are developed within the IETF (<a href="http://www.ietf.org">http://www.ietf.org</a>)</p>
Internationalized Domain Names – Labels	<p>IDN A Label</p> <p>The A-label is what is transmitted in the DNS protocol and this is the ASCII-compatible ACE) form of an IDN A string. For example "xn-1lq90l".</p> <p>IDN U Label</p> <p>The U-label is what should be displayed to the user and is the representation of the IDN in Unicode. For example "北京" ("Beijing" in Chinese).</p> <p>LDH Label</p> <p>The LDH-label strictly refers to an all-ASCII label that obeys the "hostname" (LDH) conventions and that is not an IDN; for example "icann" in the domain name "icann.org"</p>
Internationalized Domain Names Working Group	<p>IDN-WG</p> <p><a href="http://forum.icann.org/lists/gnso-idn-wg/">http://forum.icann.org/lists/gnso-idn-wg/</a></p>
Letter Digit Hyphen	<p>LDH</p> <p>The hostname convention used by domain names before internationalization. This meant that domain names could only practically contain the letters a-z, digits 0-9 and the hyphen "-". The term "LDH code points" refers to this subset. With the introduction of IDNs this rule is no longer relevant for all domain names.</p> <p>The LDH-label strictly refers to an all-ASCII label that obeys the "hostname" (LDH) conventions and that is not an IDN; for example "icann" in the domain name "icann.org".</p>
Nominating Committee	<p>NomCom</p> <p><a href="http://nomcom.icann.org/">http://nomcom.icann.org/</a></p>
Non-Commercial Users Constituency	<p>NCUC</p> <p><a href="http://www.ncdnhc.org/">http://www.ncdnhc.org/</a></p>

Policy Development Process	PDP See <a href="http://www.icann.org/general/archive-bylaws/bylaws-28feb06.htm#AnnexA">http://www.icann.org/general/archive-bylaws/bylaws-28feb06.htm#AnnexA</a>
Protecting the Rights of Others Working Group	PRO-WG See the mailing list archive at <a href="http://forum.icann.org/lists/gnso-pro-wg/">http://forum.icann.org/lists/gnso-pro-wg/</a>
Punycode	Punycode is the ASCII-compatible encoding algorithm described in Internet standard [RFC3492]. This is the method that will encode IDNs into sequences of ASCII characters in order for the Domain Name System (DNS) to understand and manage the names. The intention is that domain name registrants and users will never see this encoded form of a domain name. The sole purpose is for the DNS to be able to resolve for example a web-address containing local characters.
Registrar	Domain names ending with .aero, .biz, .com, .coop, .info, .museum, .name, .net, .org, and .pro can be registered through many different companies (known as "registrars") that compete with one another. A listing of these companies appears in the Accredited Registrar Directory.  The registrar asks registrants to provide various contact and technical information that makes up the domain name registration. The registrar keeps records of the contact information and submits the technical information to a central directory known as the "registry."
Registrar Constituency	RC <a href="http://www.icann-registrars.org/">http://www.icann-registrars.org/</a>
Registry	A registry is the authoritative, master database of all domain names registered in each Top Level Domain. The registry operator keeps the master database and also generates the "zone file" which allows computers to route Internet traffic to and from top-level domains anywhere in the world. Internet users don't interact directly with the registry operator. Users can register names in TLDs including .biz, .com, .info, .net, .name, .org by using an ICANN-Accredited Registrar.
Registry Constituency	RyC <a href="http://www.gtldregistries.org/">http://www.gtldregistries.org/</a>
Request for Comment  A full list of all Requests for Comment <a href="http://www.rfc-editor.org/rfcxx00.html">http://www.rfc-editor.org/rfcxx00.html</a>  Specific references used in this report are shown in the next column.  This document uses language, for example, "should", "must" and "may", consistent with RFC2119.	RFC <a href="ftp://ftp.rfc-editor.org/in-notes/rfc1591.txt">ftp://ftp.rfc-editor.org/in-notes/rfc1591.txt</a> <a href="ftp://ftp.rfc-editor.org/in-notes/rfc2119.txt">ftp://ftp.rfc-editor.org/in-notes/rfc2119.txt</a> <a href="ftp://ftp.rfc-editor.org/in-notes/rfc2606.txt">ftp://ftp.rfc-editor.org/in-notes/rfc2606.txt</a>
Reserved Names Working Group	RN-WG See the mailing list archive at <a href="http://forum.icann.org/lists/gnso-rn-wg/">http://forum.icann.org/lists/gnso-rn-wg/</a>
Root server	A <b>root nameserver</b> is a <b>DNS</b> server that answers requests for the root namespace domain, and redirects requests for a particular <b>top-level domain</b> to that TLD's nameservers. Although any local implementation of DNS can implement its own private root nameservers, the term "root nameserver" is generally used to describe the thirteen well-known root nameservers that implement the root namespace domain for the <b>Internet's</b> official global implementation of the Domain Name System.  All <b>domain names</b> on the <b>Internet</b> can be regarded as ending in a <b>full stop</b> character e.g. "en.wikipedia.org.". This final dot is generally implied rather than explicit, as modern DNS software does not actually require that the final dot be included when attempting to translate a domain name to an <b>IP</b> address. The empty <b>string</b> after the final dot is called the <b>root domain</b> , and all other domains (i.e. .com, .org, .net, etc.) are contained within the root domain. <a href="http://en.wikipedia.org/wiki/Root_server">http://en.wikipedia.org/wiki/Root_server</a>
Sponsored Top Level Domain	sTLD  A Sponsor is an organization to which some policy making is delegated from ICANN. The sponsored TLD has a Charter, which defines the purpose for which the sponsored TLD has been created and will be operated. The Sponsor is responsible for developing policies on the delegated topics so that the TLD is operated for the benefit of a defined group of stakeholders, known as the

	Sponsored TLD Community, that are most directly interested in the operation of the TLD. The Sponsor also is responsible for selecting the registry operator and to varying degrees for establishing the roles played by registrars and their relationship with the registry operator. The Sponsor must exercise its delegated authority according to fairness standards and in a manner that is representative of the Sponsored TLD Community.
U-label	The U-label is what should be displayed to the user and is the representation of the Internationalized Domain Name (IDN) in Unicode.
Unicode Consortium	A not-for-profit organization found to develop, extend and promote use of the Unicode standard. See <a href="http://www.unicode.org">http://www.unicode.org</a>
Unicode	Unicode is a commonly used single encoding scheme that provides a unique number for each character across a wide variety of languages and scripts. The Unicode standard contains tables that list the code points for each local character identified. These tables continue to expand as more characters are digitalized.

**Continue to Final Report: Part B**

[1] <http://www.icann.org/general/archive-bylaws/bylaws-28feb06.htm#>

[2] The ICANN "community" is a complex matrix of intersecting organizations and which are represented graphically here. <http://www.icann.org/structure/>

[3] The *Final Report* is Step 9 in the GNSO's policy development process which is set out in full at <http://www.icann.org/general/archive-bylaws/bylaws-28feb06.htm#AnnexA>.

[4] Found here <http://gns0.icann.org/issues/new-gtlds/>.

[5] The ICANN Staff *Discussion Points* documents can be found at <http://gns0.icann.org/drafts/GNSO-PDP-Dec05-StaffMemo-14Nov06.pdf> and <http://gns0.icann.org/drafts/PDP-Dec05-StaffMemo-19-jun-07.pdf>

[6] Authored in 1987 by Paul Mockapetris and found at <http://www.ietf.org/rfc/rfc1034>

[7] Authored in October 1984 by Jon Postel and J Reynolds and found at <http://www.ietf.org/rfc/rfc920>

[8] Found at <http://www.oecd.org/dataoecd/15/37/38336539.pdf>

[9] From Verisign's June 2007 *Domain Name Industry Brief*.

[10] The full list is available here <http://www.icann.org/registrar/accredited-list.html>

[11] Report found at <http://www.icann.org/dns0/wgc-report-21mar00.htm>

[12] Found at <http://www.icann.org/announcements/announcement-31aug04.htm>

[13] <http://www.registrarstats.com/Public/ZoneFileSurvey.aspx>

[14] Verisign produce a regular report on the domain name industry. [http://www.verisign.com/Resources/Naming\\_Services/Resources/Domain\\_Name\\_Industry\\_Brief/index.html](http://www.verisign.com/Resources/Naming_Services/Resources/Domain_Name_Industry_Brief/index.html)

[15] The announcement is here <http://icann.org/announcements/announcement-03jan06.htm> and the results are here <http://gns0.icann.org/issues/new-gtlds/new-gtld-pdp-input.htm>

[16] Found here <http://gns0.icann.org/issues/new-gtlds/new-gtld-pdp-input.htm>

[17] <http://gns0.icann.org/issues/new-gtlds/>

[18] For example, see the GA List discussion thread found at <http://gns0.icann.org/mailling-lists/archives/ga/msg03337.html> & earlier discussion on IANA lists <http://www.iana.org/comments/26sep1998-02oct1998/msg00016.html>. The 13 June 2002 paper regarding a taxonomy for non-ASCII TLDs is also illuminating <http://www.icann.org/committees/idn/registry-selection-paper-13jun02.htm>

[19] Found here [http://gac.icann.org/web/home/gTLD\\_principles.pdf](http://gac.icann.org/web/home/gTLD_principles.pdf)

[20] A list of the working materials of the new TLDs Committee can be found at <http://gns0.icann.org/issues/new-gtlds/>.

[21] The Outcomes Report for the IDN-WG is found <http://gns0.icann.org/drafts/idn-wg-fr-22mar07.htm>. A full set of resources which the WG is using is found at <http://gns0.icann.org/issues/idn-tlds/>.

[22] The Final Report of the RN-WG is found at <http://gns0.icann.org/drafts/rn-wg-fr19mar07.pdf>

[23] The Final Report of the PRO-WG is found at <http://gns0.icann.org/drafts/GNSO-PRO-WG-final-01Jun07.pdf>

[24] The root server system is explained here <http://en.wikipedia.org/wiki/Rootserver>

[25] Ms Doria supports all of the Principles but expressed concern about Principle B by saying "...While I strongly support the introduction of IDN TLDS, I am concerned that the unresolved issues with IDN ccTLD equivalents may interfere with the introduction of IDN TLDS. I am also concerned that some of these issues could impede the introduction of some new ASCII TLDS dealing with geographically related identifiers" and Principle D "...While I favor the establishment of a minimum set of necessary technical criteria, I am concerned that this set actually be the basic minimum set necessary to protect the stability,

security and global interoperability."

[26] Note the updated recommendation text sent to the gtd-council list after the 7 June meeting.  
<http://forum.icann.org/lists/gtd-council/msg00520.html>

[27] Reserved word limitations will be included in the base contract that will be available to applicants prior to the start of the application round.

[28] <http://www.icann.org/general/idn-guidelines-22feb06.htm>

[29] The Implementation Team sought advice from a number of auction specialists and examined other industries in which auctions were used to make clear and binding decisions. Further expert advice will be used in developing the implementation of the application process to ensure the fairest and most appropriate method of resolving contention for strings.

[30] Detailed work is being undertaken, lead by the Corporate Affairs Department, on establishing a translation framework for ICANN documentation. This element of the Implementation Guidelines may be addressed separately.

[31] <http://gnso.icann.org/drafts/GNSO-PDP-Dec05-StaffMemo-14Nov06.pdf>

[32] Consistent with ICANN's commitments to accountability and transparency found at  
<http://www.icann.org/announcements/announcement-26jan07b.htm>

[33] Found at <http://www.icann.org/dns/wgc-report-21mar00.htm>

[34] The announcement is here <http://icann.org/announcements/announcement-03jan06.htm> and the results are here  
<http://gnso.icann.org/issues/new-glds/new-gtd-pdp-input.htm>

[35] Found here <http://gnso.icann.org/issues/new-glds/new-gtd-pdp-input.htm>

[36] Found here <http://forum.icann.org/lists/gtd-council/>

[37] Archived at <http://forum.icann.org/lists/gtd-council/>

[38] Business Constituency <http://forum.icann.org/lists/gtd-council/msg00501.html>, Intellectual Property Constituency <http://forum.icann.org/lists/gtd-council/msg00514.html>, Internet Service Providers <http://forum.icann.org/lists/gtd-council/msg00500.html>, NCUC <http://forum.icann.org/lists/gtd-council/msg00530.html>, Registry Constituency <http://forum.icann.org/lists/gtd-council/msg00494.html>

[39] "My concern involves using definitions that rely on legal terminology established for trademarks for what I believe should be a policy based on technical criteria.

In the first instance I believe that this is essentially a technical issue that should have been resolved with reference to typography, homologues, orthographic neighbourhood, transliteration and other technically defined attributes of a name that would make it unacceptable. There is a large body of scientific and technical knowledge and description in this field that we could have drawn on.

By using terms that rely on the legal language of trademark law, I believe we have created an implicit redundancy between recommendations 2 and 3. I.e., I believe both 2 and 3 can be used to protect trademarks and other intellectual property rights, and while 3 has specific limitations, 2 remains open to full and varied interpretation.

As we begin to consider IDNs, I am concerned that the interpretations of confusingly similar may be used to eliminate many potential TLDs based on translation. That is, when a translation may have the same or similar meaning to an existing TLD, that the new name may be eliminated because it is considered confusing to users who know both languages."

[40] <http://data.iana.org/TLD/tlds-alpha-by-domain.txt>

[41] See section 4A -- <http://www.icann.org/udrp/udrp-policy-24oct99.htm>.

[42] In addition to the expertise within the Committee, the NCUC provided, as part of its Constituency Impact Statement expert outside advice from Professor Christine Haight Farley which said, in part, "...A determination about whether use of a mark by another is "confusingly similar" is simply a first step in the analysis of infringement. As the committee correctly notes, account will be taken of visual, phonetic and conceptual similarity. But this determination does not end the analysis. Delta Dental and Delta Airlines are confusingly similar, but are not like to cause confusion, and therefore do not infringe. ... In trademark law, where there is confusing similarity and the mark is used on similar goods or services, a likelihood of confusion will usually be found. European trademark law recognizes this point perhaps more readily than U.S. trademark law. As a result, sometimes "confusingly similar" is used as shorthand for "likelihood of confusion". However, these concepts must remain distinct in domain name policy where there is no opportunity to consider how the mark is being used."

[43] In addition, advice was sought from experts within WIPO who continue to provide guidance on this and other elements of dispute resolution procedures.

[44] Kristina Rosette provided the reference to the *Agreement on Trade-Related Aspects of Intellectual Property Rights* which is found online at [http://www.wto.org/english/tratop\\_e/trips\\_e/t\\_agm1\\_e.htm](http://www.wto.org/english/tratop_e/trips_e/t_agm1_e.htm)

"...Article 16 *Rights Conferred* 1. The owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. The rights described above shall not prejudice any existing prior rights, nor shall they affect the possibility of Members making rights available on the basis of use...."

[45] <http://www.ohchr.org/english/bodies/hrc/comments.htm>

[46] <http://gns0.icann.org/drafts/GNSO-PRO-WG-final-01Jun07.pdf>

[47] Charles Sha'ban provided a range of examples from Arabic speaking countries. For example, in Jordan, Article 7 Trademarks eligible for registration are 1- A trademark shall be registered if it is distinctive, as to words, letters, numbers, figures, colors, or other signs or any combination thereof and visually perceptible. 2- For the purposes of this Article, "distinctive" shall mean applied in a manner which secures distinguishing the goods of the proprietor of the trademark from those of other persons. Article 8 Marks which may not be registered as trademarks. The following may not be registered as trademarks: 10- A mark identical with one belonging to a different proprietor which is already entered in the register in respect of the same goods or class of goods for which the mark is intended to be registered, or so closely resembling such trademark to the extent that it may lead to deceiving third parties.

12- The trademark which is identical or similar to, or constitutes a translation of, a well-known trademark for use on similar or identical goods to those for which that one is well-known for and whose use would cause confusion with the well-known mark, or for use of different goods in such a way as to prejudice the interests of the owner of the well-known mark and leads to believing that there is a connection between its owner and those goods as well as the marks which are similar or identical to the honorary badges, flags, and other insignia as well as the names and abbreviations relating to international or regional organizations or those that offend our Arab and Islamic age-old values.

In Oman for example, Article 2 of the Sultan Decree No. 38/2000 states:

"The following shall not be considered as trademarks and shall not be registered as such: If the mark is identical, similar to a degree which causes confusion, or a translation of a trademark or a commercial name known in the Sultanate of Oman with respect to identical or similar goods or services belonging to another business, or if it is known and registered in the Sultanate of Oman on goods and service which are neither identical nor similar to those for which the mark is sought to be registered provided that the usage of the mark on those goods or services in this last case will suggest a connection between those goods or services and the owner of the known trademark and such use will cause damage to the interests of the owner of the known trademark."

Although the laws In Egypt do not have specific provisions regarding confusion they stress in great detail the importance of distinctiveness of a trade mark.

Article 63 in the IP Law of Egypt No.82 for the year 2002 states:

"A trademark is any sign distinguishing goods, whether products or services, and include is particular names represented in a distinctive manner, signatures, words, letters, numerals, design, symbols, signposts, stamps, seal, drawings, engravings, a combination of distinctly formed colors and any other combination of these elements if used, or meant to be used, to distinguish the precedents of a particular industry, agriculture, forest or mining venture or any goods, or to indicate the origin of products or goods or their quality, category, guarantee, preparation process, or to indicate the provision of any service. In all cases, a trademark shall be a sign that is recognizable by sight."

[48] Found at [http://www.wipo.int/treaties/en/ip/paris/trtdocs\\_wo020.ht](http://www.wipo.int/treaties/en/ip/paris/trtdocs_wo020.ht) with 171 contracting parties.

[49] Further information can be found at the US Patent and Trademark Office's website <http://www.uspto.gov/>

[50] Found at <http://www.icann.org/registrars/ra-agreement-17may01.htm#3>

[51] Found at <http://gns0.icann.org/drafts/idn-wg-fr-22mar07.htm>.

[52] The 2003 correspondence between ICANN's then General Counsel and the then GAC Chairman is also useful <http://www.icann.org/correspondence/touton-letter-to-tarmizi-10feb03.htm>.

[53] "My first concern relates to the protection of what can be called the linguistic commons. While it is true that much of trademark law and practice does protect general vocabulary and common usage from trademark protection, I am not sure that this is always the case in practice. I am also not convinced that trademark law and policy that applies to specific product type within a specific locale is entirely compatible with a general and global naming system."

[54] For example, David Maher, Jon Bing, Steve Metalitz, Philip Sheppard and Michael Palage.

[55] Reserved Word has a specific meaning in the ICANN context and includes, for example, the reserved word provisions in ICANN's existing registry contracts. See <http://www.icann.org/registries/agreements.htm>.

[56] "Until such time as the technical work on IDNAbis is completed, I am concerned about establishing reserved name rules connected to IDNs. My primary concern involves policy decisions made in ICANN for reserved names becoming hard coded in the IDNAbis technical solution and thus becoming technical constraints that are no longer open to future policy reconsideration."

[57] Found online at <http://gns0.icann.org/issues/new-gtlds/final-report-rn-wg-23may07.htm> and in full in Part B of the *Report*.

[58] The Committee are aware that the terminology used here for the purposes of policy recommendations requires further refinement and may be at odds with similar terminology developed in other context. The terminology may be imprecise in other contexts than the general discussion about reserved words found here.

[59] The subgroup was encouraged by the ccNSO not to consider removing the restriction on two-letter names at the top level. IANA has based its allocation of two-letter names at the top level on the ISO 3166 list. There is a risk of collisions between any interim allocations, and ISO 3166 assignments which may be desired in the future.

[60] The existing gTLD registry agreements provide for a method of potential release of two-character LDH names at the second level. In addition, two character LDH strings at the second level may be released through the process for new registry services, which process involves analysis of any technical or security concerns and provides opportunity for public input. Technical issues related to the release of two-letter and/or number strings have been addressed by the RSTEP Report on GNR's proposed registry service. The GAC has previously noted the WIPO II Report statement that "If ISO 3166 alpha-2

country code elements are to be registered as domain names in the gTLDs, it is recommended that this be done in a manner that minimises the potential for confusion with the ccTLDs."

[61] Considering that the current requirement in all 16 registry agreement reserves "All labels with hyphens in the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n")", this requirement reserves any names having any of a combination of 1296 different prefixes (36x36).

[62] Internet Draft IDNAbis Issues: <http://www.ietf.org/internet-drafts/draft-klensin-idnabis-issues-01.txt> (J. Klensin), Section 3.1.1.1

[63] Considering that the current requirement in all 16 registry agreement reserves "All labels with hyphens in the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n")", this requirement reserves any names having any of a combination of 1296 different prefixes (36x36).

[64] Considering that the current requirement in all 16 registry agreement reserves "All labels with hyphens in the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n")", this requirement reserves any names having any of a combination of 1296 different prefixes (36x36).

[65] With its recommendation, the sub-group takes into consideration that justification for potential user confusion (i.e., the minority view) as a result of removing the contractual condition to reserve gTLD strings for new TLDs may surface during one or more public comment periods.

[66] Note that this recommendation is a continuation of the recommendation in the original RN-WG report, modified to synchronize with the additional work done in the 30-day extension period.

[67] Ms Doria said "...My primary concern focuses on the term 'morality'. While public order is frequently codified in national laws and occasionally in international law and conventions, the definition of what constitutes morality is not generally codified, and when it is, I believe it could be referenced as public order. This concern is related to the broad set of definitions used in the world to define morality. By including morality in the list of allowable exclusions we have made the possible exclusion list indefinitely large and have subjected the process to the consideration of all possible religious and ethical systems. ICANN or the panel of reviewers will also have to decide between different sets of moral principles, e.g. a morality that holds that people should be free to express themselves in all forms of media and those who believe that people should be free from exposure to any expression that is prohibited by their faith or moral principles. This recommendation will also subject the process to the fashion and occasional demagoguery of political correctness. I do not understand how ICANN or any expert panel will be able to judge that something should be excluded based on reasons of morality without defining, at least de-facto, an ICANN definition of morality? And while I am not a strict constructionist and sometimes allow for the broader interpretation of ICANN's mission, I do not believe it includes the definition of a system of morality."

[68] <http://www.icann.org/tlds/agreements/net/appendix7.html>

[69] "While I accept that a prospective registry must show adequate operational capability, creating a financial criteria is of concern. There may be many different ways of satisfying the requirement for operational capability and stability that may not be demonstrable in a financial statement or traditional business plan. E.g., in the case of an less developed community, the registry may rely on volunteer effort from knowledgeable technical experts.

Another concern I have with financial requirements and high application fees is that they may act to discourage applications from developing nations or indigenous and minority peoples that have a different set of financial opportunities or capabilities than those recognized as acceptable within an expensive and highly developed region such as Los Angeles or Brussels."

[70] "In general I support the policy though I do have concerns about the implementation which I discuss below in relation to IG (P)".

[71] "In general I support the idea that a registry that is doing a good job should have the expectancy of renewal. I do, however, believe that a registry, especially a registry with general market dominance, or specific or local market dominance, should be subject to comment from the relevant user public and to evaluation of that public comment before renewal. When performance is satisfactory, there should an expectation of renewal. When performance is not satisfactory, there should be some procedure for correcting the situation before renewal."

[72] Consensus Policies has a particular meaning within the ICANN environment. Refer to <http://www.icann.org/general/consensus-policies.htm> for the full list of ICANN's Consensus Policies.

[73] <http://www.icann.org/general/bylaws.htm#AnnexA>

[74] <http://www.icann.org/registries/agreements.htm>

[75] The full list of reports is found in the Reference section at the end of the document.

[76] <http://www.icann.org/announcements/announcement-4-07mar07.htm>

[77] Found at <http://www.icann.org/registrars/ra-agreement-17may01.htm>

[78] Found at <http://www.icann.org/registrars/accreditation.htm>.

[79] Text of Recommendation #6: "Strings must not be contrary to generally accepted legal norms relating to morality and public order that are enforceable under generally accepted and internationally recognized principles of law. Examples of such principles of law include, but are not limited to, the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) and the International Convention on the Elimination of All Forms of Racial Discrimination, intellectual property treaties administered by the World Intellectual Property Organisation (WIPO) and the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)."

[80] Ms Doria took over from former GNSO Council Chairman (and GNSO new TLDs Committee Chairman) Dr Bruce Tonkin on 7 June 2007. Ms Doria's term runs until 31 January 2008.

[81] Available at: <http://forum.icann.org/lists/gtld-council/pdfOQqgaRNrXf.pdf>

[82] Available at: <http://ipjustice.org/wp/2007/06/13/ncuc-newgtld-stmt-june2007/>

[83] This glossary has been developed over the course of the policy development process. Refer here to ICANN's glossary of terms <http://www.icann.org/general/glossary.htm> for further information.

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**R-34**

**RESPONDENT'S EXHIBIT**

## GAC PRINCIPLES REGARDING NEW gTLDs

Presented by the Governmental Advisory Committee  
March 28, 2007

### 1. Preamble

- 1.1 The purpose of this document is to identify a set of general public policy principles related to the introduction, delegation and operation of new generic top level domains (gTLDs). They are intended to inform the ICANN Board of the views of the GAC regarding public policy issues concerning new gTLDs and to respond to the provisions of the World Summit on the Information Society (WSIS) process, in particular “*the need for further development of, and strengthened cooperation among, stakeholders for public policies for generic top-level domains (gTLDs)*”<sup>1</sup> and those related to the management of Internet resources and enunciated in the Geneva and Tunis phases of the WSIS.
- 1.2 These principles shall not prejudice the application of the principle of national sovereignty. The GAC has previously adopted the general principle that the Internet naming system is a public resource in the sense that its functions must be administered in the public or common interest. The WSIS Declaration of December 2003 also states that “*policy authority for Internet-related public policy issues is the sovereign right of States. They have rights and responsibilities for international Internet-related public policy issues.*”<sup>2</sup>
- 1.3 A gTLD is a top level domain which is not based on the ISO 3166 two-letter country code list<sup>3</sup>. For the purposes and scope of this document, new gTLDs are defined as any gTLDs added to the Top Level Domain name space after the date of the adoption of these principles by the GAC.
- 1.4 In setting out the following principles, the GAC recalls ICANN’s stated core values as set out in its by-laws:

- a. Preserving and enhancing the operational stability, reliability, security, and global interoperability of the Internet.*
- b. Respecting the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN’s activities to those matters within ICANN’s mission requiring or significantly benefiting from global coordination.*
- c. To the extent feasible and appropriate, delegating coordination functions to or recognizing the policy role of other responsible entities that reflect the interests of affected parties.*

<sup>1</sup> See paragraph 64 of the WSIS Tunis Agenda, at <http://www.itu.int/wsis/docs2/tunis/off/6rev1.html>

<sup>2</sup> See paragraph 49.a) of the WSIS Geneva declaration at <http://www.itu.int/wsis/docs/geneva/official/dop.html>

<sup>3</sup> See: <http://www.icann.org/general/glossary.htm#G>

*d. Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making.*

*e. Where feasible and appropriate, depending on market mechanisms to promote and sustain a competitive environment.*

*f. Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest.*

*g. Employing open and transparent policy development mechanisms that (i) promote well-informed decisions based on expert advice, and (ii) ensure that those entities most affected can assist in the policy development process.*

*h. Making decisions by applying documented policies neutrally and objectively, with integrity and fairness.*

*i. Acting with a speed that is responsive to the needs of the Internet while, as part of the decision-making process, obtaining informed input from those entities most affected.*

*j. Remaining accountable to the Internet community through mechanisms that enhance ICANN's effectiveness.*

*k. While remaining rooted in the private sector, recognizing that governments and public authorities are responsible for public policy and duly taking into account governments' or public authorities' recommendations.*

## **2. Public Policy Aspects related to new gTLDs**

When considering the introduction, delegation and operation of new gTLDs, the following public policy principles need to be respected:

### *Introduction of new gTLDs*

#### **2.1 New gTLDs should respect:**

a) The provisions of the Universal Declaration of Human Rights<sup>4</sup> which seek to affirm *"fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women"*.

b) The sensitivities regarding terms with national, cultural, geographic and religious significance.

#### **2.2 ICANN should avoid country, territory or place names, and country, territory or regional language or people descriptions, unless in agreement with the relevant governments or public authorities.**

<sup>4</sup> See <http://www.un.org/Overview/rights.html>

- 2.3 The process for introducing new gTLDs must make proper allowance for prior third party rights, in particular trademark rights as well as rights in the names and acronyms of inter-governmental organizations (IGOs).
- 2.4 In the interests of consumer confidence and security, new gTLDs should not be confusingly similar to existing TLDs. To avoid confusion with country-code Top Level Domains no two letter gTLDs should be introduced.

*Delegation of new gTLDs*

- 2.5 The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination. All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process.
- 2.6 It is important that the selection process for new gTLDs ensures the security, reliability, global interoperability and stability of the Domain Name System (DNS) and promotes competition, consumer choice, geographical and service-provider diversity.
- 2.7 Applicant registries for new gTLDs should pledge to:
  - a) Adopt, before the new gTLD is introduced, appropriate procedures for blocking, at no cost and upon demand of governments, public authorities or IGOs, names with national or geographic significance at the second level of any new gTLD.
  - b) Ensure procedures to allow governments, public authorities or IGOs to challenge abuses of names with national or geographic significance at the second level of any new gTLD.
- 2.8 Applicants should publicly document any support they claim to enjoy from specific communities.
- 2.9 Applicants should identify how they will limit the need for defensive registrations and minimise cyber-squatting that can result from bad-faith registrations and other abuses of the registration system

*Operation of new gTLDs*

- 2.10 A new gTLD operator/registry should undertake to implement practices that ensure an appropriate level of security and stability both for the TLD itself and for the DNS as a whole, including the development of best practices to ensure the accuracy, integrity and validity of registry information.
- 2.11 ICANN and a new gTLD operator/registry should establish clear continuity plans for maintaining the resolution of names in the DNS in the event of registry failure.

These plans should be established in coordination with any contingency measures adopted for ICANN as a whole.

- 2.12 ICANN should continue to ensure that registrants and registrars in new gTLDs have access to an independent appeals process in relation to registry decisions related to pricing changes, renewal procedures, service levels, or the unilateral and significant change of contract conditions.
- 2.13 ICANN should ensure that any material changes to the new gTLD operations, policies or contract obligations be made in an open and transparent manner allowing for adequate public comment.
- 2.14 The GAC WHOIS principles are relevant to new gTLDs.

### **3. Implementation of these Public Policy Principles**

- 3.1 The GAC recalls Article XI, section 2, no. 1 h) of the ICANN Bylaws, which state that the ICANN Board shall notify the Chair of the Governmental Advisory Committee in a timely manner of any proposal raising public policy issues. Insofar, therefore, as these principles provide guidance on GAC views on the implementation of new gTLDs, they are not intended to substitute for the normal requirement for the ICANN Board to notify the GAC of any proposals for new gTLDs which raise public policy issues.
- 3.2 ICANN should consult the GAC, as appropriate, regarding any questions pertaining to the interpretation of these principles.
- 3.3 If individual GAC members or other governments express formal concerns about any issues related to new gTLDs, the ICANN Board should fully consider those concerns and clearly explain how it will address them.
- 3.4 The evaluation procedures and criteria for introduction, delegation and operation of new TLDs should be developed and implemented with the participation of all stakeholders.

*N.B. The public policy priorities for GAC members in relation to the introduction of Internationalised Domain Name TLDs (IDN TLDs) will be addressed separately by the GAC.*

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**RESPONDENT'S EXHIBIT**



[ICANN Resolutions](#) » 2008-06-26 - GNSO Recommendations on New gTLDs

**Important note:** The Board Resolutions are as reported in the Board Meeting Transcripts, Minutes & Resolutions portion of ICANN's website. Only the words contained in the Resolutions themselves represent the official acts of the Board. The explanatory text provided through this database (including the summary, implementation actions, identification of related resolutions, and additional information) is an interpretation or an explanation that has no official authority and does not represent the purpose behind the Board actions, nor does any explanations or interpretations modify or override the Resolutions themselves. Resolutions can only be modified through further act of the ICANN Board.

## 2008-06-26 - GNSO Recommendations on New gTLDs

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Resolution of the ICANN Board

**Topic:**

GNSO recommendations on New gTLDs

**Summary:**

Board adopts GNSO policy recommendations on new gTLDs and directs staff to complete detailed implementation plan in consultation with the community, subject to final approval before the New gTLD Program is launched.

**Category:**

gTLDs

**Meeting Date:**

Thu, 26 Jun 2008

**Resolution Number:**

2008.06.26.02, 2008.06.26.03

**URL for Resolution:**

<http://www.icann.org/en/minutes/resolutions-26jun08.htm>

**Status:**

Complete

**Implementation Actions:**

- Publish first Applicant Guidebook draft for public comment and discussion.
  - Responsible entity: Cross-departmental team for policy implementation
  - Due date: None provided
  - Completion date: 23 October 2008
- Publish Applicant Guidebook draft v2 for public comment and discussion.
  - Responsible entity: Cross-departmental team for policy implementation
  - Due date: None provided
  - Completion date: 19 February 2009
- Publish updated Applicant Guidebook excerpts for public comment and discussion.
  - Responsible entity: Cross-departmental team for policy implementation
  - Due date: None provided
  - Completion date: 31 May 2009
- Attend global consultation on overarching issues / outreach events in New York, London, Hong Kong, and Abu Dhabi.
  - Responsible entity: Cross-departmental team for policy implementation
  - Due date: None provided
  - Completion date: 4 August 2009
- Publish Applicant Guidebook draft v3 for public comment and discussion.
  - Responsible entity: Cross-departmental team for policy implementation
  - Due date: None provided
  - Completion date: 4 October 2009

Publish updated Applicant Guidebook excerpts for public comment and discussion.

- Responsible entity: Cross-departmental team for policy implementation
- Due date: None provided
- Completion date: 15 February 2010
- Publish Applicant Guidebook draft v4 for public comment and discussion.
  - Responsible entity: Cross-departmental team for policy implementation
  - Due date: None provided
  - Completion date: 31 May 2010
- Publish proposed final version of Applicant Guidebook for public comment, discussion, and possible adoption.
  - Responsible entity: Cross-departmental team for policy implementation
  - Due date: None provided
  - Completion date: 12 November 2010

### **Resolution Text:**

Whereas, the GNSO initiated a policy development process on the introduction of New gTLDs in December 2005. <<http://gnsso.icann.org/issues/new-gtlds/>>

Whereas, the GNSO Committee on the Introduction of New gTLDs addressed a range of difficult technical, operational, legal, economic, and policy questions, and facilitated widespread participation and public comment throughout the process.

Whereas, the GNSO successfully completed its policy development process on the Introduction of New gTLDs and on 7 September 2007, and achieved a Supermajority vote on its 19 policy recommendations. <<http://gnsso.icann.org/meetings/minutes-gnsso-06sep07.shtml>>

Whereas, the Board instructed staff to review the GNSO recommendations and determine whether they were capable of implementation.

Whereas, staff has engaged international technical, operational and legal expertise to provide counsel on details to support the implementation of the Policy recommendations and as a result, ICANN cross-functional teams have developed implementation details in support of the GNSO's policy recommendations, and have concluded that the recommendations are capable of implementation.

Whereas, staff has provided regular updates to the community and the Board on the implementation plan. <<http://icann.org/topics/new-gtld-program.htm>>

Whereas, consultation with the DNS technical community has led to the conclusion that there is not currently any evidence to support establishing a limit to how many TLDs can be inserted in the root based on technical stability concerns. <<http://www.icann.org/topics/dns-stability-draft-paper-06feb08.pdf>>

Whereas, the Board recognizes that the process will need to be resilient to unforeseen circumstances.

Whereas, the Board has listened to the concerns about the recommendations that have been raised by the community, and will continue to take into account the advice of ICANN's supporting organizations and advisory committees in the implementation plan.

Resolved (2008.06.26.02), based on both the support of the community for New gTLDs and the advice of staff that the introduction of new gTLDs is capable of implementation, the Board adopts the GNSO policy recommendations for the introduction of new gTLDs <<http://gns0.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>>.

Resolved (2008.06.26.03), the Board directs staff to continue to further develop and complete its detailed implementation plan, continue communication with the community on such work, and provide the Board with a final version of the implementation proposals for the board and community to approve before the new gTLD introduction process is launched.

### **Other Related Resolutions:**

- Resolutions 06.22, 06.23, and 06.24 authorize ICANN Staff to post "Notice of Intent to Advance Implementation of New gTLD Process"; request GNSO to complete initial report on new gTLDs at or before ICANN's next public meeting in Marrakech, Morocco: <http://www.icann.org/en/minutes/minutes-31mar06.htm>.
- Resolution 06.49 and 06.50 call for GNSO to complete PDP on new gTLDs (requesting GNSO to publish its report for public comment by November 2006) and call for Community to comment on the reports published by the New TLDs Committee: <http://www.icann.org/en/minutes/minutes-30jun06.htm>.
- Resolution 07.93, 07.94, and 07.95 acknowledge the GNSO Committee's work and ask staff to continue working on implementation analysis of policy recommendations and report to Board: <http://www.icann.org/en/minutes/resolutions-02nov07.htm>.
- Resolution 2008.02.15.06 directs staff to continue consultation with Board, GNSO, and community on implementation issues and progress concerning GNSO policy recommendations on new gTLDs: <http://www.icann.org/en/minutes/resolutions-15feb08.htm>.
- Other resolutions TBD.

### **Additional Information:**

- Information on the New gTLD Program, available at: <http://www.icann.org/en/topics/new-gtld-program.htm>.
- GNSO Policy Work on new gTLDs, available at: <http://gnso.icann.org/issues/new-gtlds/>.
- Recommendations on Policy Development for introduction of new gTLDs, available at: <http://gnso.icann.org/issues/new-gtlds/goel-mehta-01feb06.pdf>.
- A copy of the Final Report regarding Introduction of New Generic Top-Level Domains is available at: <http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>.
- The resolution does not address funding for the items identified therein.

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**RESPONDENT'S EXHIBIT**



HOME

- Home
- Introducing the Independent Objector
- Final Activity Report
- Limited Public Interests Objections
- Community Objections
- ICANN Applicant Guidebook for the New gTLD Program
- The Dispute Resolution Process

The Independent Objector's Objections

- ".AMAZON" - ".アマゾン" - ".亚马逊" - CTY - Amazon EU Sàrl
- ".CHARITY" - CTY - Corn Lake LLC
- ".CHARITY" - CTY - Spring Registry Limited
- ".慈善" - CTY - Excellent First Limited
- ".HEALTH" - LPI - Afilias Limited
- ".HEALTH" - LPI - DotHealth LLC
- ".HEALTH" - LPI - Goose Fest LLC
- ".HEALTHCARE" - LPI - Silver Glen LLC
- ".HEALTHCARE" - CTY - Silver Glen LLC
- ".HOSPITAL" - LPI - Ruby Pike LLC
- ".HOSPITAL" - CTY - Withdrawn Objection
- ".MED" - CTY - Charleston Road Registry Inc.
- ".MED" - LPI - Charleston Road Registry Inc.
- ".MED" - LPI - Hexap sas
- ".MED" - CTY - Medistry
- ".MED" - LPI - Medistry
- ".MEDICAL" - LPI - Steel Hill LLC
- ".MEDICAL" - CTY - Steel Hill LLC

The Independent Objector's Comments on

### The Objections Filed by the Independent Objector



On 12 March 2013, the Independent Objector (IO) has lodged 24 objections against new applied-for gTLDs before the International Chamber of Commerce (ICC).

Acting solely in the best interests of the public who use the global internet, in full independence and impartiality, the IO is

limited to filing objections on the grounds of [Limited Public Interest](#) and [Community](#).

Following his exchanges with some applicants for new gTLDs, as part of the [Initial Notice Procedure](#), he remained convinced that, for some applications, an objection was still warranted on the Limited Public Interest and/or Community grounds.

The following list of objections will be examined by experts' panels appointed by the ICC and in light of the [New gTLD Dispute Resolution Procedure from ICANN](#), the [ICANN gTLD Applicant Guidebook](#), the [ICC Rules for Expertise](#), the [Appendix III to the ICC Rules for Expertise](#) and the [ICC Practice Note on the Administration of Cases](#).

Following the withdrawal of 2 of his objections and the withdrawal of 3 applications which rendered the related objections moot, the number of the IO's objections was brought down to 19.

- Following the filing of his Limited Public Interest Objection against the application for ".Med" by DocCheck AG, the applicant withdrew its application. Consequently, the IO has withdrawn his objection against this application on 26 March 2013.

- On 21 May 2013, the Independent Objector has withdrawn his Community Objection against the application for the gTLD string ".Hospital", applied by Ruby Pike LLC, since an objection has been filed by another objector, the American Hospital Association, against the same gTLD string and on the same ground. He did so only after careful review of their objection to make sure there were no extraordinary circumstances which could justify that he maintains his objection.

**Community Objections filed by the Independent Objector:**

gTDL string	Applicant	Application ID
.Amazon	Amazon EU S.à r.l.	1-1315-58086

Controversial Applications

The Issue of "Closed Generic" gTLDs

News

Contact

**Contact**

Pr. Alain Pellet  
*Independent Objector*

Julien Boissise  
*Legal Assistant to the Independent Objector*

**Email:**  
Contact@Independent-Objector-newgtlds.org

You can also use our  
Contact Form.

.アマゾン[Amazon]	Amazon EU S.à r.l.	1-1318-83995
.亚马逊[Amazon]	Amazon EU S.à r.l.	1-1318-5591
.Charity	Corn Lake, LLC	1-1384-49318
.Charity	Spring Registry Limited	1-1241-87032
.慈善 [Charity]	Excellent First Limited	1-961-6109
.Healthcare	Silver Glen, LLC	1-1492-32589
.Hospital	Ruby Pike, LLC	1-1505-15195
.Indians	Reliance Industries Limited	1-1308-78414
.Med	Charleston Road Registry Inc.	1-1139-2965
.Med	Medistry LLC	1-907-38758
.Medical	Steel Hill, LLC	1-1561-23663
.Patagonia	Patagonia, Inc.	1-1084-78254

**Limited Public Interest Objections filed by the Independent Objector:**

gTDL string	Applicant	Application ID
.Health	Afilias Limited	1-868-3442
.Health	dot Health Limited	1-1178-3236
.Health	DotHealth, LLC	1-1684-6394
.Health	Goose Fest, LLC	1-1489-82287
.Healthcare	Silver Glen, LLC	1-1492-32589
.Hospital	Ruby Pike, LLC	1-1505-15195
.Med	Charleston Road Registry Inc.	1-1139-2965
.Med	DocCheck AG	1-1320-21500
.Med	HEXAP SAS	1-1192-28569
.Med	Medistry LLC	1-907-38758
.Medical	Steel Hill, LLC	1-1561-23663



Version imprimable | Plan du site  
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Connexion

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**RESPONDENT'S EXHIBIT**



GET STARTED

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## Minutes | Meeting of the New gTLD Program Committee

This page is available in: English العربية | Español | Français | Русский | 中文

08 Sep 2014

**Note: On 10 April 2012, the Board established the New gTLD Program Committee, comprised of all voting members of the Board that are not conflicted with respect to the New gTLD Program. The Committee was granted all of the powers of the Board (subject to the limitations set forth by law, the Articles of Incorporation, Bylaws or ICANN's Conflicts of Interest Policy) to exercise Board-level authority for any and all issues that may arise relating to the New gTLD Program. The full scope of the Committee's authority is set forth in its charter at <http://www.icann.org/en/groups/board/new-gTLD>.**

**A Regular Meeting of the New gTLD Program Committee of the ICANN Board of Directors was held on 8 September 2014 at 14:00 UTC in Istanbul, Turkey.**

**Committee Chairman Cherine Chalaby promptly called the meeting to order.**

**In addition to the Chair the following Directors participated in all or part of the meeting: Fadi Chehadé (President and CEO, ICANN), Steve Crocker (Board Chairman), Chris Disspain, Bill Graham, Bruno**

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Names

**Jonne Sommen (IEP Liaison) was in attendance as a non-voting liaison to the Committee. Heather Dryden was in attendance as an observer to the Committee.**

Universal Acceptance Initiative

**Board Member Elect: Rinalia Abdul Rahim (observing).**

Policy

**Secretary: John Jeffrey (General Counsel and Secretary).**

Public Comment

**ICANN Executives and Staff in attendance for all or part of the meeting: Akram Atallah (President, Global Domains Division); Megan Bishop (Board Support Coordinator); Michelle Bright (Board Support Manager); Samantha Eisner (Senior Counsel); Allen Grogan (Chief Contracting Counsel); Dan Halloran (Deputy General Counsel); Jamie Hedlund (Vice President, Strategic Programs); Vinciane Koenigsfeld (Board Support Content Manager); Erika Randall (Counsel); Amy Stathos (Deputy General Counsel); and Christine Willett (Vice President, gTLD Operations).**

Technical Functions

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**These are the Minutes of the Meeting of the New gTLD Program Committee, which took place on 8 September 2014.**

1. [Main Agenda:](#)

- a. [Approval of Minutes](#)
- b. [Remaining Items from Beijing, Durban, Buenos Aires, Singapore and London GAC Advice: Updates and Actions](#)  
[Rationale for Resolution 2014.09.08.NG02](#)
- c. [BGC Recommendation on Reconsideration Request 14-27, Amazon EU S.á.r.l.](#)  
[Rationale for Resolution 2014.09.08.NG03](#)
- d. [Perceived Inconsistent String Confusion Objection Expert Determinations](#)
- e. [Any Other Business](#)

## 1. Main Agenda:

### a. Approval of Minutes

The Chair introduced for approval the Minutes of the 21 June, 18 July and 30 July 2014 meetings. George Sadowsky noted that he should not be listed as present during the 30 July 2014 meeting.

George Sadowsky moved and Mike Silber seconded the proposed resolution. The Committee took the following action:

Resolved (2014.09.08.NG01), the Board New gTLD Program Committee (NGPC) approves the minutes of its 21 June, 18 July and 30 July 2014 NGPC meetings.

**All members of the Committee present voted in favor of Resolution 2014.09.08.NG01. Ray Plzak was unavailable to vote on the Resolution. The Resolution carried.**

### b. Remaining Items from Beijing, Durban, Buenos Aires, Singapore and London GAC Advice: Updates and Actions

The Committee continued its discussion of advice issued by the Governmental Advisory Committee (GAC) to the Board concerning the New gTLD Program. Chris Disspain provided an overview of a proposed new iteration of the scorecard to respond to open items of GAC advice. The Committee discussed each of the actions it proposed to take to address the advice, which included a discussion of the best manner to provide a clarification to the GAC about the next steps to be taken with respect to the .SPA applications. Akram Atallah explained that the scorecard clarifies the interpretation taken about the GAC advice and how to process the two remaining applications for .SPA. He noted that both remaining applications for .SPA would continue to move forward to the next phase of the New gTLD Program, which is for the applicants to resolve the contention set pursuant to the procedure in the Applicant Guidebook.

With respect to the GAC's advice in the London Communiqué concerning .AFRICA, Mike Silber

expressed dissatisfaction with the amount of time taken by staff to implement the Committee's action adopting the GAC's advice to not proceed with DotConnectAfrica Trust's application (number 1-1165-42560) for .AFRICA.

Staff reported that revised responses to the GAC's questions originally posed in the Singapore Communiqué were sent to the GAC on 2 September 2014. Additionally, the Committee was advised that the applicant for the .INDIANS gTLD, which application was the subject of GAC advice, recently withdrew its application.

The Committee received an update on the ongoing work to develop a response to address the GAC's advice regarding protections for Intergovernmental Organizations (IGOs) in light of the Board's action approving certain GNSO consensus policy recommendations on protections for IGOs-INGOs. Chris updated the Committee on his recent participation in the GNSO Council's meeting held in early September. The Chair inquired about the approximate timeline for the next steps to consider the GAC advice and the GNSO policy recommendations. Chris stated that the timeline was unclear because the process in the GNSO Operating Procedures allowing the GNSO to amend its policy recommendations prior to final approval by the Board had never been tested.

Jamie Hedlund provided an overview of new advice in the GAC's London Communiqué concerning Red Cross and Red Crescent terms and names as they relate to the policy development process. The Committee determined that it would discuss this item of advice during its meeting at ICANN 51 in Los Angeles, and requested staff to prepare briefing materials on the matter.

George Sadowsky moved and Olga Madruga-Forti seconded the proposed resolution to adopt the new iteration of the scorecard. The Committee discussed the proposed resolution and then took the following action:

Whereas, the GAC met during the ICANN 46 meeting in Beijing and issued a Communiqué on 11 April 2013 ("Beijing Communiqué").

Whereas, the GAC met during the ICANN 47 meeting in Durban and issued a Communiqué on 18 July 2013 ("Durban Communiqué").

Whereas, the GAC met during the ICANN 48 meeting in Buenos Aires and issued a Communiqué on 20 November 2013 ("Buenos Aires Communiqué").

Whereas, the GAC met during the ICANN 49 meeting in Singapore and issued a Communiqué on 27 March 2014, which was amended on 16 April 2014 ("Singapore Communiqué").

Whereas, the GAC met during the ICANN 50 meeting in London and issued a Communiqué on 25 June 2014 ("London Communiqué").

Whereas, the NGPC adopted scorecards to respond to certain items of the GAC's advice, which were adopted on 4 June 2013, 10 September 2013, 28 September 2013, 5 February 2014 and 14 May 2014.

Whereas, the NGPC has developed another iteration of the scorecard to respond to certain remaining items of GAC advice in the Beijing Communiqué, the Durban Communiqué, the Buenos Aires Communiqué, the Singapore Communiqué, and new

advice in the London Communiqué.

Whereas, the NGPC is undertaking this action pursuant to the authority granted to it by the Board on 10 April 2012, to exercise the ICANN Board's authority for any and all issues that may arise relating to the New gTLD Program.

Resolved (2014.09.08.NG02), the NGPC adopts the scorecard titled "GAC Advice (Beijing, Durban, Buenos Aires, Singapore, and London): Actions and Updates (8 September 2014)", attached as Annex 1 [PDF, 429 KB] to this Resolution, in response to open items of Beijing, Durban, Buenos Aires, Singapore and London GAC advice.

**All members of the Committee present voted in favor of Resolution 2014.09.08.NG02. Ray Plzak was unavailable to vote on the Resolution. The Resolution carried.**

### Rationale for Resolution 2014.09.08.NG02

Article XI, Section 2.1 of the ICANN Bylaws

<https://www.icann.org/resources/pages/bylaws-2012-02-25-en> – XI permit the GAC to "put issues to the Board directly, either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision to existing policies." The GAC issued advice to the Board on the New gTLD Program through its Beijing Communiqué dated 11 April 2013, its Durban Communiqué dated 18 July 2013, its Buenos Aires Communiqué dated 20 November 2013, its Singapore Communiqué dated 27 March 2014 (as amended 16 April 2014), and its London Communiqué dated 25 June 2014. The ICANN Bylaws require the Board to take into account the GAC's advice on public policy matters in the formulation and adoption of the policies. If the Board decides to take an action that is not consistent with the GAC advice, it must inform the GAC and state the reasons why it decided not to follow the advice. The Board and the GAC will then try in good faith to find a mutually acceptable solution. If no solution can be found, the Board will state in its final decision why the GAC advice was not followed.

The NGPC has previously addressed items of the GAC's Beijing, Durban, Buenos Aires, and Singapore advice, but there are some items that the NGPC continues to work through. Additionally, the GAC issued new advice in its London Communiqué that relates to the New gTLD Program. The NGPC is being asked to consider accepting some of the remaining open items of the Beijing, Durban, Buenos Aires, and Singapore GAC advice, and new items of advice from London as described in the [scorecard](#) [PDF, 429 KB] (dated 8 September 2014).

As part of its consideration of the GAC advice, ICANN posted the GAC advice and officially notified applicants of the advice, triggering the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1. The Beijing GAC advice was posted on 18 April 2013 <<http://newgtlds.icann.org/en/announcements-and-media/announcement-18apr13-en>>; the Durban GAC advice was posted on 1 August 2013 <<http://newgtlds.icann.org/en/announcements-and-media/announcement-01aug13-en>>; the Buenos Aires GAC advice was posted on 11 December 2013 <<http://newgtlds.icann.org/en/announcements-and-media/announcement-11dec13-en>>; the Singapore advice was posted on 11 April 2014 <<http://newgtlds.icann.org/en/announcements-and-media/announcement-11apr14-en>>; and

the London advice was posted on 14 July 2014

<<http://newgtlds.icann.org/en/announcements-and-media/announcement-14jul14-en>>.

The complete set of applicant responses are provided at:

<<http://newgtlds.icann.org/en/applicants/gac-advice/>>.

In addition, on 23 April 2013, ICANN initiated a public comment forum to solicit input on how the NGPC should address Beijing GAC advice regarding safeguards applicable to broad categories of new gTLD strings <<http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm>>. The NGPC has considered the applicant responses in addition to the community feedback on how ICANN could implement the GAC's safeguard advice in the Beijing Communiqué in formulating its response to the remaining items of GAC advice.

As part of its deliberations, the NGPC reviewed various materials, including, but not limited to, the following materials and documents:

- GAC Beijing Communiqué:  
[https://gacweb.icann.org/download/attachments/27132037/Final\\_GAC\\_Communique\\_Durban\\_20130718.pdf?version=1&modificationDate=1375787122000&api=v2](https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Communique_Durban_20130718.pdf?version=1&modificationDate=1375787122000&api=v2) [PDF, 237 KB]
- GAC Durban Communiqué:  
[https://gacweb.icann.org/download/attachments/27132037/Final\\_GAC\\_Communique\\_Durban\\_20130717.pdf?version=1&modificationDate=1374215119858&api=v2](https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Communique_Durban_20130717.pdf?version=1&modificationDate=1374215119858&api=v2) [PDF, 103 KB]
- GAC Buenos Aires Communiqué:  
[https://gacweb.icann.org/download/attachments/27132037/FINAL\\_Buenos\\_Aires\\_GAC\\_Communique\\_20131120.pdf?version=1&modificationDate=1385055905332&api=v2](https://gacweb.icann.org/download/attachments/27132037/FINAL_Buenos_Aires_GAC_Communique_20131120.pdf?version=1&modificationDate=1385055905332&api=v2) [PDF, 96.5 KB]
- GAC Singapore Communiqué (as amended):  
[https://gacweb.icann.org/download/attachments/27132037/GAC\\_Amended\\_Communique\\_Singapore\\_20140327%5B1%5D.pdf?version=1&modificationDate=1397656205000&api=v2](https://gacweb.icann.org/download/attachments/27132037/GAC_Amended_Communique_Singapore_20140327%5B1%5D.pdf?version=1&modificationDate=1397656205000&api=v2) [PDF, 147 KB]
- GAC London Communiqué:  
<https://gacweb.icann.org/download/attachments/27132037/Communique%20London%20final.pdf?version=1&modificationDate=1406852169128&api=v2> [PDF, 138 KB]
- Applicant responses to GAC advice: <http://newgtlds.icann.org/en/applicants/gac-advice/>
- Applicant Guidebook, Module 3:  
<http://newgtlds.icann.org/en/applicants/agb/objection-procedures-04jun12-en.pdf> [PDF, 260 KB]

In adopting its response to remaining items of Beijing, Durban, Buenos Aires, and Singapore GAC advice, and the new London advice, the NGPC considered the applicant comments submitted, the GAC's advice transmitted in the Communiqués, and the procedures established in the AGB and the ICANN Bylaws. The adoption of the GAC advice as provided in the attached scorecard will assist with resolving the GAC advice in manner that permits the greatest number of new gTLD applications to continue to move forward as soon as possible.

There are no foreseen fiscal impacts associated with the adoption of this resolution. Approval of the resolution will not impact security, stability or resiliency issues relating to the DNS.

As part of ICANN's organizational administrative function, ICANN posted the London Communiqué and officially notified applicants of the advice on 14 July 2014. The Singapore Communiqué, the Buenos Aires Communiqué, the Durban Communiqué, and the Beijing Communiqué were posted on 11 April 2014, 11 December 2013, 18 April 2013 and 1 August 2013, respectively. In each case, this triggered the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1.

c. BGC Recommendation on Reconsideration Request 14-27, Amazon EU S.á.r.l.

The Chair presented the Committee with an overview of background information concerning Reconsideration Request 14-27, noting that the requestor, Amazon EU S.á.r.l., called for the reversal of the Committee's decision on the GAC advice concerning .AMAZON (and related IDNs). The requestor, also asked that the GAC advice concerning .AMAZON (and related IDNs) be rejected, and that staff be directed to proceed with processing the applications. The Chair noted that the Board Governance Committee (BGC) recommended that the Reconsideration Request be denied because the requester failed to state the proper grounds for reconsideration.

Amy Stathos reminded the Committee of the letter sent by the requestor following the BGC's determination, and noted that the two issues addressed in the letter were already dealt with in the BGC's recommendation being presented for the Committee's action.

The Committee discussed the claims raised in the Reconsideration Request, including the requestor's claim about the untimeliness of the GAC's advice on .AMAZON (and related IDNs) pursuant to the New gTLD Applicant Guidebook. Amy provided a summary of the provisions in the Applicant Guidebook concerning the timing of GAC advice.

Chris Disspain moved and Bill Graham seconded the proposed resolution. The Committee engaged in further discussion, and then took the following action:

Whereas, Amazon EU S.á.r.l ("Requester") filed Reconsideration Request 14-27 asking the New gTLD Program Committee ("NGPC") to: (i) reverse Resolution 2014.05.14.NG03; (ii) reject the Governmental Advisory Committee's advice on .AMAZON and the related internationalized domain names (collectively, the "Amazon Applications"); and (iii) direct ICANN staff to proceed with the Amazon Applications.

Whereas, the BGC considered the issues raised in Reconsideration Request 14-27.

Whereas, the BGC recommended that the Request be denied because the Requester has not stated proper grounds for reconsideration and the NGPC agrees.

Resolved (2014.09.08.NG03), the NGPC adopts the BGC Recommendation on Reconsideration Request 14-27, which can be found at <https://www.icann.org/en/system/files/files/recommendation-amazon-22aug14-en.pdf> [PDF, 177 KB].

**All members of the Committee present voted in favor of Resolution 2014.09.08.NG03. Ray Plzak was unavailable to vote on the Resolution. The**

Resolution carried.

## Rationale for Resolution 2014.09.08.NG03

### I. Brief Summary

Amazon EU S.à.r.l. (the "Requester") applied for .AMAZON and related internationalized domain names ("IDNs") in Japanese and Chinese (the "Amazon Applications"). In its Durban Communiqué, the Governmental Advisory Committee ("GAC") informed the Board that it had reached consensus advice on .AMAZON and the related IDNs ("GAC Durban Advice"). After significant and careful consideration, on 14 May 2014, the NGPC passed Resolution 2014.05.14.NG03 ("Resolution") accepting the GAC Durban Advice and directed that the Amazon Applications should not proceed.

On 30 May 2014, the Requester filed the instant Request, seeking reconsideration of the NGPC's acceptance of the GAC Durban Advice. The Requester argues that the GAC Durban Advice was untimely and was improperly accorded a strong presumption by the NGPC. In addition, the Requester argues that the NGPC considered false or inaccurate material information and failed to consider other material information in accepting the advice.

The BGC concluded that the Requester has not stated proper grounds for reconsideration. Specifically, the BGC concluded that: (i) there is no evidence that the NGPC's actions in adopting the Resolution support reconsideration; (ii) the Requester has not demonstrated that the NGPC failed to consider any material information in passing the Resolution or that the NGPC relied on false or inaccurate material information in passing the Resolution; and (iii) the NGPC properly considered the GAC Durban Advice in accordance with ICANN's Bylaws and the procedures set forth in the gTLD Applicant Guidebook. Therefore, the BGC recommended that Reconsideration Request 14-27 be denied (and the entirety of the BGC Recommendation is incorporated by reference as though fully set forth in this rationale). The NGPC agrees.

### II. Relevant Background Facts

The Requester applied for the Amazon Applications.

On 17 June 2012 the GAC Chair sent a letter to ICANN's Board, which included the following:

Given the delays in the gTLD application process, the timing of the upcoming ICANN meetings, and the amount of work involved, **the GAC advises the Board** that it will not be in a position to offer any new advice on the gTLD applications in 2012. For this reason, the GAC is considering the implications of providing any GAC advice on gTLD applications. These considerations are not expected to be finalized before the Asia-Pacific meeting in April 2013.<sup>1</sup>

On 20 November 2012, the GAC representatives for the governments of Brazil and Peru submitted an Early Warning with respect to the Amazon Applications.<sup>2</sup>

On 14 February 2013, the GAC declared that it would be posting a list of applications that the GAC would consider as a whole during the GAC meeting to be held in Beijing in April 2013.<sup>3</sup> On 25 February 2013, the GAC further stated that it was "still compiling and processing inputs received from GAC members" and would post further information as soon as possible.<sup>4</sup>

In March 2013, the Requester wrote to the Board regarding its Public Interest Commitments with respect to the Amazon Applications,<sup>5</sup> and ICANN's Independent Objector ("IO") objected to the Amazon Applications on behalf of the "Amazon Community," *i.e.*, the "South-American region with the same English name around the Amazon River" ("Community Objection").<sup>6</sup>

On 11 April 2013, in its Beijing Communiqué the GAC identified the Amazon Applications as warranting further GAC consideration and advised the Board not to proceed with those applications beyond Initial Evaluation ("GAC Beijing Advice").<sup>7</sup> The Requester responded to the GAC Beijing Advice arguing that the GAC had not reached consensus advice on the Applications, and that the New gTLD Applicant Guidebook ("Guidebook") did not provide for ICANN to delay specific applications for further GAC consideration.<sup>8</sup> The Requester also argued that it had relied on the Guidebook's provisions regarding geographic strings, which included a provision for Community Objections to geographic strings, and that the GAC Beijing Advice represented a "new attempt to isolate strings that raise geographic issues" and acted "as an effective veto on Community-driven policies."<sup>9</sup>

In early July 2013, the U.S. Government stated its intent to "remain neutral" with respect to the Amazon Applications, "thereby allowing [the] GAC to present consensus objections on these strings to the Board, if no other government objects."<sup>10</sup> Also in early July 2013, the Requester wrote to the Board about its ongoing efforts to negotiate with Brazil and Peru regarding the Amazon Applications. The Requester also submitted proposed Public Interest Commitments.<sup>11</sup>

On 18 July 2013, in its Durban Communiqué, the GAC informed the Board that it had reached consensus on GAC Objection Advice on the Amazon Applications.<sup>12</sup>

On 23 August 2013, the Requester responded to the GAC Durban Advice, arguing that it: "(1) is inconsistent with international law; (2) would have discriminatory impacts that conflict directly with ICANN's Governing Documents; and (3) contravenes policy recommendations implemented within the [Guidebook] achieved by international consensus over many years."<sup>13</sup>

On 3 December 2013, the Requester sent another letter to the Board, providing further detail and clarification regarding the Requester's ongoing attempts to negotiate with the governments of Brazil and Peru regarding the Amazon Applications.<sup>14</sup> Just about a month later the Requester wrote to the Board contending that the Amazon Applications do not fall within any of the five Guidebook categories of "geographic names" requiring government or public authority support.<sup>15</sup>

On 30 May 2014, the Requester filed the instant Request, seeking reconsideration of the NGPC's acceptance of the GAC Durban Advice. The Requester argues that the GAC Durban Advice was untimely and was improperly accorded a strong presumption by the NGPC. In addition, the Requester argues that the NGPC considered false or inaccurate material information and failed to consider material information in accepting the advice.<sup>16</sup>

On 26 July 2014, the BGC asked the Requester for clarification regarding its allegation that the NGPC considered false or inaccurate material information in passing the Resolution. Amazon responded to the BGC's request clarifying the allegedly false or inaccurate material information that Amazon claims the NGPC relied upon in passing the Resolution. ("2 August Letter").<sup>17</sup>

### III. Issues

The issues for reconsideration are whether the NGPC failed to consider material information or relied on false or inaccurate material information in:

1. Accepting the GAC Durban Advice although it was filed after the close of the objection filing period<sup>18</sup>;
2. Individually considering the Amazon Applications, although the NGPC should only do so "under exceptional circumstances,"<sup>19</sup>;
3. Failing to adhere to appropriate GAC Governing Principles by applying a "strong presumption" to the GAC Durban Advice<sup>20</sup>;
4. Improperly relying on the Early Warning as rationale for the GAC Durban Advice<sup>21</sup>;
5. Improperly: (i) considering false or inaccurate material information in correspondence submitted from representatives of the governments of Brazil and Peru; and (ii) failing to consider material correspondence and comments from the Requester and other parties<sup>22</sup>;
6. Failing to consider material information provided by the United States Government in its July 2013 statement<sup>23</sup>;
7. Failing to consider the Expert Determination rejecting the IO's Community Objection to the Amazon Applications<sup>24</sup>;
8. Failing to consider the Expert Analysis and the Requester's request for additional studies<sup>25</sup>;
9. Failing to consider its obligations under ICANN's Bylaws and Articles of Incorporation in accepting the GAC Durban Advice<sup>26</sup>; and
10. Failing to consider the fiscal implications of its acceptance of the GAC Durban Advice.<sup>27</sup>

### IV. The Relevant Standards for Evaluating Reconsideration Requests

ICANN's Bylaws call for the BGC to evaluate and, for challenged Board (or NGPC) action, make recommendations to the Board (or NGPC) with respect to Reconsideration Requests. See Article IV, Section 2 of the Bylaws. The NGPC, bestowed with the powers of the Board in this instance, has reviewed and thoroughly considered the BGC Recommendation on Request 14-27 and finds the analysis sound.<sup>28</sup>

### V. Analysis and Rationale

- A. The Requester Has Not Stated a Proper Basis for Reconsideration with Respect to the Timeliness of the GAC Durban Advice.

The BGC concluded, and the NGPC agrees, that the Requester has not stated a

proper basis for reconsideration with respect to the timeliness of the GAC Durban Advice. The Requester argues that the NGPC should not have accepted the GAC Durban Advice because that advice was submitted on 18 July 2013, after the 13 March 2013 close of the objection filing period. The Requester, however, neither argues nor provides any evidence demonstrating that the NGPC considered false or inaccurate material information, or failed to consider material information, in accepting the allegedly untimely GAC Durban Advice. Accordingly, there is no basis for reconsideration.

Further, contrary to what the Requester argues, the NGPC must consider GAC advice on new gTLDs submitted at any time. Notwithstanding the Guidebook, ICANN's Bylaws affirmatively require the Board to consider any issues that the GAC may put to the Board by way of comment or advice. (Bylaws, Art. XI, §§ 2.1.i and 2.1.j.) The provisions of the Guidebook regarding the treatment of GAC Advice do not supplant the requirements of the Bylaws on this subject matter.

B. The Requester Has Not Stated A Proper Basis for Reconsideration With Respect To The NGPC's Consideration Of The Amazon Applications.

The BGC concluded, and the NGPC agrees, that the Requester has not stated a proper basis for reconsideration with respect to the NGPC's consideration of the Amazon Applications. The Requester argues that the NGPC improperly "individually" considered the Amazon Applications failing to explain why the circumstances surrounding its Applications are sufficiently "exceptional" to warrant individual consideration.<sup>29</sup> Again, the Requester does not argue that the NGPC considered false or inaccurate material information, or failed to consider material information, in passing the Resolution and therefore has not stated proper grounds for reconsideration. (Bylaws, Art. IV, § 2.2.)

In any event, Requester's argument contradicts Section 5.1 of the Guidebook, which explicitly provides for the Board to individually consider any new gTLD application, including as the result of GAC Advice:

The Board reserves the right to individually consider an application for a new gTLD to determine whether approval would be in the best interest of the Internet Community. Under exceptional circumstances, the Board may individually consider a gTLD application. **For example, the Board might individually consider an application as a result of GAC Advice on New gTLDs** or of the use of an ICANN accountability mechanism.

(Guidebook, § 5.1) (emphasis added). As the Guidebook makes clear, GAC Advice is precisely the sort of "exceptional circumstance" that would justify the Board's individual consideration of a gTLD application. Further, as discussed above, ICANN's Bylaws affirmatively require the Board to consider any issues that the GAC may put to the Board by way of comment or advice. (Bylaws, Art. XI, §§ 2.1.i and 2.1.j.)

C. The Requester's Claim that the NGPC Afforded a Strong Presumption to the GAC Durban Advice Does Not Support Reconsideration.

The BGC concluded, and the NGPC agrees, that the Requester has not stated

proper grounds for reconsideration with respect to the alleged presumption applied to the GAC Durban Advice on the Amazon Applications.

Requester claims that the GAC Durban Advice should not have created a strong presumption for the ICANN Board that the Amazon Applications should not proceed.<sup>30</sup> In support, the Requester contends that because the GAC Durban Advice was provided after the close of the objection period, it was not provided pursuant to the Guidebook, and thus was not subject to the presumption standards set forth therein regarding GAC Advice.<sup>31</sup> Once again, because the Requester does not argue that the NGPC considered false or inaccurate material information, or failed to consider material information, in accepting the GAC Durban Advice, it has not stated proper grounds for reconsideration. (Bylaws, Art. IV, § 2.2.)

#### D. The NGPC Properly Considered The Rationale Given In Early Warnings

The BGC concluded, and the NGPC agrees, that the NGPC properly considered the rationale provided in the GAC Early Warning submitted on behalf of the governments of Brazil and Peru. The Requester argues that the NGPC improperly considered the rationale given in the Early Warning because, the Requester claims, that rationale "reflects only the concerns of two governments and cannot be used as the consensus rationale of the entire GAC."<sup>32</sup> The Requester's claims do not support reconsideration.

In its rationale for the Resolution, the NGPC stated that although it "d[id] not have the benefit of the rationale relied upon by the GAC in issuing [the GAC Durban Advice], the NGPC considered the reason/rationale provided in the GAC Early Warning submitted on behalf of the governments of Brazil and Peru ..."<sup>33</sup> The NGPC did not state that it considered or relied on the rationale of the Early Warning to represent the rationale for the GAC Durban Advice—to the contrary, it explicitly stated that it "d[id] not have the benefit" of that rationale. There simply is no evidence that the NGPC relied on false or inaccurate material information in accepting the GAC Durban Advice. Further, insofar as the Requester argues that the NGPC failed to consider material information in failing to "conduct further inquiry of the GAC as to the basis and reason for the consensus advice,"<sup>34</sup> nothing in ICANN's Bylaws, the Guidebook, or the GAC's Operating Principles requires the GAC to provide a rationale for its advice.

Finally, the BGC notes that the NGPC did not "rely" on the Early Warning in determining whether to accept the GAC Durban Advice. Rather, as is reflected in the resolution, the NGPC considered, among other materials, numerous documents, legal advice and letters submitted by the Requester and by other community stakeholders.

#### E. The NGPC Did Not Rely on False or Inaccurate Material Information or Fail to Consider Material Information in its Consideration of Public Comments and Correspondence to the Board.

The BGC concluded, and the NGPC agrees, that the Requester has not demonstrated that the NGPC relied on false or inaccurate material information or failed to consider material relevant information with respect to public comments

and correspondence to the Board.

The Requester argues that the NGPC: (i) relied on false or inaccurate material information in considering correspondence sent to the Board by the governments of Brazil and Peru; and (ii) failed to consider material information in failing to consider other correspondence, including correspondence sent by the Requester.<sup>35</sup>

As to consideration of correspondence sent by the governments of Brazil and Peru, the Requester appears to argue that the "NGPC accepts the views of two governments and infers that these opinions represent consensus advice of all GAC members."<sup>36</sup> The claim is unsupported. In its rationale for the Resolution, the NGPC stated only that it "considered as part of the NGPC's action" an 11 April 2014 letter from the Vice Minister of Foreign Affairs for Peru, and a 14 April 2014 letter from a Director in the Ministry of External Relations of Brazil. Nowhere does the NGPC state, or even imply, that it took the correspondence from Brazil and Peru as GAC consensus advice. Furthermore, the Requester cites to no Guidebook or Bylaws provision that prohibits the NGPC from taking into consideration correspondence duly submitted to ICANN.

The Requester also argues that, although the 11 April 2014 letter from the Peruvian Government contained false information regarding whether Amazon has an ISO 3166-2 code,<sup>37</sup> the NGPC "failed to identify any false and inaccurate information contained in the letter."<sup>38</sup> However, alleged reliance on false or inaccurate information is a basis for reconsideration only if that information was material to a decision. The NGPC's rationale does not state that it relied on the Peruvian Government's representation regarding the ISO 3166-2 code in deciding to accept the GAC Durban Advice, and the Requester does not explain how the NGPC did so rely, or how the information is at all relevant.<sup>39</sup> Furthermore, the NGPC is not required to identify any and all false or inaccurate information contained in the correspondence it considers and explain that the NGPC did not rely on that specific information in reaching its determination, particularly when that information is not relevant or material to the decision being made.

Finally, in its 2 August Letter responding to the BGC's request for clarification, the Requester argues that the 14 April 2014 letter from the Brazilian government inaccurately states that "all steps prescribed in the gTLD Applicant Guidebook in order to object to [the Amazon Applications] ... have been timely taken by Brazil and Peru ..."<sup>40</sup> The Requester claims that this statement is inaccurate because the GAC Durban Advice was not timely. Again, the NGPC's alleged reliance on false or inaccurate information is a basis for reconsideration only if that information was material to the NGPC's determination. And, once again, the Requester does not explain how the NGPC relied upon the Brazilian Government's allegedly inaccurate representation in deciding to accept the GAC Durban Advice. Further, as is discussed above, the Requester's argument regarding the alleged untimeliness of the GAC Durban Advice is not a proper basis for reconsideration.<sup>41</sup>

The Requester also argues that the NGPC failed to consider material public comments and correspondence. For instance, the Requester argues that, while the NGPC considered the responses of the governments of Brazil and Peru to the Expert Analysis, it did not consider the Requester's response.<sup>42</sup> However, in

its rationale the NGPC explicitly noted that it considered communications it received in response to the Expert Analysis, including the 14 April 2014 response from Scott Hayden, the Requester's Vice President, Intellectual Property, as well as letters from the Peruvian government and the Brazilian government. Additionally, the NGPC received and considered in its deliberations correspondence dated 4 September 2014 from Flip Petillion on behalf of the Requester regarding the BGC Recommendation on Reconsideration Request 14-27.<sup>43</sup> The Requester identifies no other specific public comment or piece of correspondence that it claims the NGPC failed to consider, and the NGPC's rationale for the Resolution clearly states that its "review of significant materials included, but [was] not limited to," the listed materials.<sup>44</sup> In any event, the Requester does not identify any provision in the Bylaws or Guidebook that would require the NGPC to consider (much less identify and discuss) every comment or piece of correspondence received.<sup>45</sup>

#### F. The NGPC Did Not Fail to Consider Material Information from the United States Government.

The BGC concluded, and the NGPC agrees, that the Requester has not demonstrated that the NGPC failed to consider material information with respect to the United States Government's statement.

The Requester argues that the NGPC failed to consider material information by failing to consider the July 2013 statement from the United States Government on geographic indicators.<sup>46</sup> In its statement, the United States Government expressed its intent to "remain neutral" on the Applications, so as to "allow[] the GAC to present consensus objections on those strings to the Board, if no other government objects." Nonetheless, the Requester argues that "[t]he statement from the U.S. Government calls into direct question the belief that the GAC Durban Advice is clearly representative of the consensus adoption of the entire GAC of the opinion set forth by Brazil and Peru in its Early Warning or follow-up correspondence."<sup>47</sup>

Further, the United States Government's statement does not negate the fact that the GAC Durban Advice represents consensus GAC Advice. Pursuant to GAC Operating Principle 47, "consensus is understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection."<sup>48</sup> As the statement makes clear, the United States did not object to the GAC Durban Advice. The mere fact that the United States remained neutral with respect to the GAC Durban Advice was not material to the NGPC's consideration of that advice.

#### G. The NGPC Did Not Fail to Consider Material Information with Respect to the Expert Determination.

The BGC concluded, and the NGPC agrees, that the Requester has not demonstrated that the NGPC failed to consider material information with respect to the Expert Determination.

The Requester argues that the NGPC improperly failed to consider the Expert Determination rejecting the IO's Community Objection to the Amazon Applications.<sup>49</sup> The Requester appears to contend that the Expert Determination was material because: (1) the objections of the Brazilian and Peruvian

governments would have been properly raised in the context of a Community Objection—which those governments did not bring; and (2) a Community Objection by those governments would have failed, as is evidenced by the Expert Determination.<sup>50</sup>

GAC members are not limited to raising objections that could have been raised in, or that meet the standards required to prevail upon, one of the four enumerated grounds for formal objections. (Guidebook Module 3, § 3.2.) Rather, GAC Advice on new gTLD applications is generally "intended to address applications that are identified by national governments to be problematic, e.g., that potentially violate national law or raise sensitivities." (Guidebook Module 3, § 3.1.) GAC members' discretion with respect to their reasons for objecting to gTLD applications is reflected in the fact that the GAC is not required to issue a rationale for its advice. In any event, the briefing materials of the NGPC's 29 April 2014 and 14 May 2014 meetings reflect that the Expert Determination was considered by the NGPC during its deliberations on the Amazon Applications.<sup>51</sup>

#### H. The NGPC Did Not Fail to Consider Material Information with Respect to the Expert Analysis.

The BGC concluded, and the NGPC agrees, that the Requester has not demonstrated that the NGPC failed to consider material information with respect to the Expert Analysis.

The Requester argues that ICANN instructed Professor Passa "to address only whether under intellectual property laws, governments could claim legally recognized sovereign or geographic rights in the term 'Amazon' or whether ICANN was 'obliged' to grant .AMAZON based on pre-existing trademark registrations," when "[t]he real question is whether, by accepting GAC advice, which is not rooted in any existing law, ICANN would be violating either national [or] international law."<sup>52</sup>

The Guidebook sets forth the parameters in which GAC Advice will be given under the New gTLD Program:

ICANN will consider the GAC Advice on New gTLDs as soon as practicable. The Board *may consult with independent experts*, such as those designated to hear objections in the New gTLD Dispute Resolution Procedure, in cases where the issues raised in the GAC advice are pertinent to one of the subject matter areas of the objection procedures.

(Guidebook, § 3.1) (emphasis added). Under this provision, the Board has the discretion to seek an independent expert opinion on issues raised by GAC Advice. The Board may also define the scope of its consultation with independent experts. As such, the Requester's objection to the scope of Professor Passa's assignment is not a basis for reconsideration.

The Requester has not cited to any provision of the Bylaws or Guidebook that would require ICANN to commission additional legal studies at the request of a New gTLD Applicant. Reconsideration for failure to consider material information

is not proper where "the party submitting the request could have submitted, but did not submit, the information for the Board's consideration at the time of the action or refusal to act." (Bylaws, Art. IV, § 2.b.) The Requester was given multiple opportunities to present materials for the NGPC's consideration, including the opportunity—which it accepted—to respond to the Expert Analysis. In fact, the Requester attached to its response to the GAC Durban Advice a lengthy excerpt from a legal treatise on the protection of geographic names.<sup>53</sup> If the Requester believed that additional legal analysis was required, it was free to commission that analysis and submit it to the NGPC.

I. The NGPC Did Not Fail to Consider Material Information with Respect to Its Bylaws, Articles of Incorporation, and Affirmations of Commitment.

The BGC concluded, and the NGPC agrees, that the Requester has not stated a proper basis for reconsideration with respect to the NGPC's consideration of its obligations under ICANN's Bylaws, Articles of Incorporation, and Affirmations of Commitment.

The Requester alleges that the NGPC failed to take into account material information regarding its obligations under Articles I.2, II.3, and III.1 of ICANN's Bylaws; Article 4 of its Articles of Incorporation; and Sections 4, 5, 7, and 9.3 of its Affirmations of Commitment.<sup>54</sup> The Requester's disagreement with the Resolution does not, however, demonstrate that the NGPC failed to consider those obligations. And, as the rationale for the Resolution makes clear, the NGPC acted pursuant to its obligation under Article XI, Section 2.1 of the Bylaws, to duly address advice put to it by the GAC.<sup>55</sup>

J. The NGPC Did Not Fail to Consider Material Information with Respect to the Fiscal Implications of the Resolution.

The BGC concluded, and the NGPC agrees, that the Requester has not demonstrated that the NGPC failed to consider material information with respect to the fiscal implications of the Resolution. The Requester contends that "[s]hould it be determined that the [Resolution] in fact violates various national and international laws, the costs of defending an action (whether through the Independent Review Process or through U.S. courts) will have significant fiscal impacts on ICANN..."<sup>56</sup> The Requester has not demonstrated that the NGPC did not consider the potential for litigation arising out of the Resolution, including the potential fiscal impact of such litigation. In any event, the Requester has not demonstrated how the speculative possibility of litigation is material to the NGPC's determination here. As such, the Requester has not identified a proper ground for reconsideration.

VI. Decision

The NGPC had the opportunity to consider all of the materials submitted by or on behalf of the Requester or that otherwise relate to Request 14-27. Following consideration of all relevant information provided, the NGPC reviewed and has adopted the BGC's Recommendation on Request 14-27 (<https://www.icann.org/en/system/files/files/recommendation-amazon-22aug14-en.pdf> [PDF, 177 KB]), which shall be deemed a part of this Rationale and is attached to the Reference Materials to the NGPC Submission on this matter.

In terms of timing of the BGC's Recommendation, Sections 2.16 and 2.17 of Article IV of the Bylaws provides that the BGC shall make a final determination or recommendation to the Board [or NGPC as appropriate] with respect to a Reconsideration Request within thirty days following receipt of the request, unless impractical and the Board [or NGPC as appropriate] shall issue its decision on the BGC's recommendation within 60 days of receipt of the Reconsideration Request, or as soon thereafter as feasible. (See Bylaws, Article IV, Sections 2.16 and 2.17.) The BGC required additional time to make its recommendation due to its request for clarification from the Requester, and due to the volume of Reconsideration Requests received within recent months. As such, the first practical opportunity for the BGC to make a decision on this Request was on 22 August 2014; it was impractical for the BGC to do so sooner. Then, the first feasible chance for the NGPG to consider Request 14-27 was on 8 September 2014.

Adopting the BGC's recommendation has no direct financial impact on ICANN and will not negatively impact the systemic security, stability and resiliency of the domain name system.

This decision is an Organizational Administrative Function that does not require public comment.

#### d. Perceived Inconsistent String Confusion Objection Expert Determinations

The Committee continued its previous discussions about perceived inconsistent String Confusion Objection ("SCO") Expert Determinations. The Chair presented the Committee with potential options to address the perceived inconsistent SCO Expert Determinations, including adopting the review mechanism that was published for public comment in February 2014, or not adopting the review mechanism. The Committee also explored the boundaries of its discretionary authority to potentially individually consider and possibly send to the International Centre for Dispute Resolution ("ICDR") for further review, specific perceived inconsistent or otherwise seemingly unreasonable SCO Expert Determinations.

Amy Stathos provided a summary of the public comments received on the review mechanism to address perceived inconsistent SCO Expert Determinations that was published for public comment.

The Committee engaged in a discussion of the relative merits and disadvantages of the various options presented to address the perceived inconsistent or otherwise seemingly unreasonable SCO Expert Determinations. Mike Silber supported the idea of sending specific perceived inconsistent or otherwise seemingly unreasonable SCO Expert Determinations back to the ICDR for further review, and expressed dissatisfaction that the ICDR did not resolve internally the perceived inconsistencies at issue. Bill Graham and George Sadowsky agreed. Olga Madruga-Forti inquired about the rules and procedures that would be in place if this option were selected, and the Committee engaged in a discussion of the same.

The Committee also considered how the various options could be implemented if adopted.

The Committee requested that staff prepare additional briefing materials in light of the discussion so that the matter could be acted upon at its next meeting.

## e. Any Other Business

The Committee was provided with a brief update on the Independent Review Process between DotConnectAfrica Trust and ICANN regarding the .AFRICA new gTLD.

Erika Mann inquired about name collisions, and Akram Atallah provided an update on implementation of name collision controlled interruption periods by new gTLD registry operators and whether the measures in the name collision framework adopted by the Committee on 30 July 2014 were effectively working.

The Chair called the meeting to a close.

Published on 13 October 2014

<sup>1</sup> 17 June 2013 Letter *available at* <https://www.icann.org/en/system/files/correspondence/dryden-to-crocker-17jun12-en.pdf> [PDF, 74 KB] (emphasis in original).

<sup>2</sup> <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-05-14-en>

<sup>3</sup> <https://gacweb.icann.org/display/gacweb/Governmental+Advisory+Committee>

<sup>4</sup> <https://gacweb.icann.org/display/gacweb/Governmental+Advisory+Committee>

<sup>5</sup> <https://www.icann.org/en/system/files/correspondence/king-to-crocker-et-al-05mar13-en.pdf> [PDF, 93.9 KB]

<sup>6</sup> Determination on Community Objection, ¶¶ 40, 59, *available at* <http://newgtlds.icann.org/sites/default/files/drsp/03feb14/determination-1-1-1315-58086-en.pdf> [PDF, 553 KB].

<sup>7</sup> Beijing Communiqué *available at* <https://www.icann.org/en/system/files/correspondence/gac-to-board-18apr13-en.pdf> [PDF, 155 KB].

<sup>8</sup> Response to GAC Beijing Advice, at Pgs. 3-5, *available at* <http://newgtlds.icann.org/sites/default/files/applicants/23may13/gac-advice-response-1-1315-58086-en.pdf> [PDF, 280 KB].

<sup>9</sup> Response to GAC Beijing Advice, at Pgs. 2-3, *available at* <http://newgtlds.icann.org/sites/default/files/applicants/23may13/gac-advice-response-1-1315-58086-en.pdf> [PDF, 280 KB].

<sup>10</sup> [http://www.ntia.doc.gov/files/ntia/publications/usg\\_nextsteps\\_07052013\\_0.pdf](http://www.ntia.doc.gov/files/ntia/publications/usg_nextsteps_07052013_0.pdf) [PDF, 11.4 KB]

<sup>11</sup> <https://www.icann.org/en/system/files/correspondence/king-to-crocker-et-al-04jul13-en.pdf> [PDF, 67.4 KB]

<sup>12</sup> Durban Communiqué *available at* <http://newgtlds.icann.org/en/applicants/gac-advice/durban47>.

<sup>13</sup> Response to GAC Durban Advice, at Pg. 2, *available at* <http://newgtlds.icann.org/sites/default/files/applicants/03sep13/gac-advice-response-1-1315-58086-en.pdf> [PDF, 6.10 MB].

<sup>14</sup> <https://www.icann.org/en/system/files/correspondence/king-to-chehade-et-al-03dec13-en.pdf> [PDF, 129 KB]

<sup>15</sup>

<https://www.icann.org/en/system/files/correspondence/king-to-crocker-et-al-10jan14-en.pdf> [PDF, 71.2 KB]

<sup>16</sup> <https://www.icann.org/en/system/files/files/request-amazon-30may14-en.pdf> [PDF, 180 KB]

<sup>17</sup> <https://www.icann.org/en/system/files/files/petillion-to-ngpc-bgc-02aug14-en.pdf> [PDF, 475 KB]

<sup>18</sup> See Request 14-27, § 8, Pgs. 6-7.

<sup>19</sup> See Request 14-27, § 8, Pgs. 7-8.

<sup>20</sup> See Request 14-27, § 8, Pgs. 8-9.

<sup>21</sup> See Request 14-27, § 8, Pgs. 10-11.

<sup>22</sup> See Request 14-27, § 8, Pgs. 11-14.

<sup>23</sup> See Request 14-27, § 8, Pgs. 14-16.

<sup>24</sup> See Request 14-27, § 8, Pgs. 16-18.

<sup>25</sup> See Request 14-27, § 8, Pgs. 18-19.

<sup>26</sup> See Request 14-27, § 8, Pgs. 19-21.

<sup>27</sup> See Request 14-27, § 8, Pgs. 21-22.

<sup>28</sup> Having a reconsideration process whereby the BGC reviews and, if it chooses, makes a recommendation to the Board/NGPC for approval, positively affects ICANN's transparency and accountability. It provides an avenue for the community to ensure that staff and the Board are acting in accordance with ICANN's policies, Bylaws, and Articles of Incorporation.

<sup>29</sup> See Request 14-27, § 8, Pg. 8.

<sup>30</sup> See Request 14-27, § 8, Pgs. 8-9.

<sup>31</sup> See Request 14-27, § 8, Pgs. 8-9.

<sup>32</sup> Request 14-27, § 8, Pg.10.

<sup>33</sup> Resolution 2014.05.14.NG03 Rationale available at <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-05-14-en - 2.b>.

<sup>34</sup> Request 14-27, § 8, Pg. 10.

<sup>35</sup> See Request 14-27, § 8, Pgs. 11-14.

<sup>36</sup> See Request 14-27, § 8, Pg. 11; see also Request 14-27, § 8, Pgs. 13-14.

<sup>37</sup> The ISO 3166-2 code is published by the International Organization for Standardization and assigns five-digit alphanumeric strings to countries' administrative divisions and dependent territories. (See [http://www.iso.org/iso/home/standards/country\\_codes/updates\\_on\\_iso\\_3166.htm?show=tab3](http://www.iso.org/iso/home/standards/country_codes/updates_on_iso_3166.htm?show=tab3).)

<sup>38</sup> See Request 14-27, § 8, Pgs. 13-14.

<sup>39</sup>

In its 2 August Letter responding to the BGC's request for clarification, the Requester adds that this same representation was made by Peru's GAC representative to the GAC prior to its vote on the GAC Durban Advice. (2 August Letter at 1-2.) However, the GAC is an independent advisory committee, and not part of ICANN's Board. As such, the materials considered by the GAC in rendering its advice are not a proper basis for reconsideration.

<sup>40</sup> 2 August Letter, Pg. 2, available at <https://www.icann.org/en/system/files/files/petillion-to-ngpc-bgc-02aug14-en.pdf> [PDF, 475 KB]

<sup>41</sup> In its 2 August Letter, the Requester also argues that following the issuance of the GAC Durban Advice but prior to the NGPC vote on the Resolution, it requested, and was denied, the opportunity to meet with the NGPC to present its position. The Requester does not challenge this staff and/or Board action and points to no Bylaw or ICANN policy or procedure that would require such a meeting.

<sup>42</sup> See Request 14-27, § 8, Pg. 12.

<sup>43</sup> 4 September Letter, available at <https://www.icann.org/en/system/files/files/petillion-to-ngpc-04sep14-en.pdf> [PDF, 504 KB].

<sup>44</sup> Resolution 2014.05.14.NG03 Rationale available at [https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-05-14-en - 2.b](https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-05-14-en-2.b).

<sup>45</sup> The Requester also appears to argue that the NGPC should have solicited opinions from other governments. (Request, § 8, Pg. 12.) However, it cites to no Bylaws or Guidebook provision that would require the NGPC to do so.

<sup>46</sup> See Request 14-27, § 8, Pgs. 14-15.

<sup>47</sup> See Request 14-27, § 8, Pg. 15.

<sup>48</sup> GAC Operating Principle 47 available at <https://gacweb.icann.org/display/gacweb/GAC+Operating+Principles>.

<sup>49</sup> See Request 14-27, § 8, Pgs. 16-17.

<sup>50</sup> See Request 14-27, § 8, Pg. 17.

<sup>51</sup> Briefing materials of NGPC 29 April 2014 meeting available at <https://www.icann.org/en/system/files/bm/briefing-materials-1-29apr14-en.pdf> [PDF, 485 KB] and <https://www.icann.org/en/system/files/bm/briefing-materials-2-29apr14-en.pdf> [PDF, 950 KB]; Briefing materials of NGPC 14 May 2014 meeting available at <https://www.icann.org/en/system/files/bm/briefing-materials-1-14may14-en.pdf> [PDF, 688 KB] and <https://www.icann.org/en/system/files/bm/briefing-materials-2-14may14-en.pdf> [PDF, 1.62 MB].

<sup>52</sup> Request 14-27, § 8, Pgs. 18-19 (emphasis in original).

<sup>53</sup> See Response to GAC Durban Advice, Appx. A, available at <https://www.icann.org/en/system/files/files/request-annex-amazon-2-30may14-en.pdf> [PDF, 19.8 MB].

<sup>54</sup> See Request 14-27, § 8, Pgs. 19-21.

<sup>55</sup> The Requester also argues that the NGPC "should have sought comment from the [Generic Names Supporting Organization ("GNSO")] as to whether [the GAC Durban Advice was] in violation of GNSO Policy." (Request, § 8, Pg. 21.) However, the Requester cites to no Bylaws or Guidebook provision that would

require the NGPC to do so.

<sup>56</sup> Request 14-27, § 8, Pgs. 21-22.

  
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## Approved Board Resolutions | Special Meeting of the ICANN Board

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08 Dec 2011

\* Note: Where available, draft Rationale of the Board's actions is presented under the associated Resolution. The draft Rationale is not final until approved with the minutes of the Board meeting.

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[Policy](#)[Rationale for Resolution 2011.12.08.12](#)[Public Comment](#)[2.6.2 SSAC Appointments – Don Blumenthal and Rod Rasmussen](#)[Technical Functions](#)[Rationale for Resolution 2011.12.08.13](#)[Contact](#)**3. ATRT Recommendation 5: Board Compensation**[Rationale for Resolutions 2011.12.08.14 – 2011.12.18](#)[Help](#)**4. Board Member Rules on Conflicts of Interest for New gTLDs**[Rationale for Resolution 2011.12.08.19](#)**1. New gTLDs**

**Conflict of Interest Identification:** Ram Mohan, Thomas Narten, Thomas Roessler, Bruce Tonkin, Suzanne Woolf and Kuo-Wei Wu did not participate in the deliberation of these items.

**1.1. Applicant Support**

Whereas, the JAS WG had published its Final Report with recommendations for a program to provide support to applicants requiring financial assistance in applying for and operating new gTLDs.

Whereas, a Board working group was formed during the Dakar ICANN Meeting (24-28 October 2011) to work with staff on an implementation model taking into account the JAS WG Final Report and timely implementation of program.

Whereas, the Board considered and discussed potential implementation models taking into account the current New gTLD Program development stage and timing.

It is hereby Resolved (2011.12.08.01), the Board directs staff to finalize the implementation plan in accordance with the proposed criteria and process for the launch of the Applicant Support Program in January 2012.

Resolved (2011.12.08.02), the Board approves the fee reduction to \$47,000 Applicant Support candidates that qualify according

to the established criteria.

Resolved (2011.12.08.03), the Board directs staff to amend the communications campaign as needed to incorporate the Applicant Support Program which should include the publication of a brief handbook.

### Rationale for Resolutions 2011.12.08.01 – 2011.12.08.03

*Delaying the evaluation of financial support applications provides additional time to raise funds. It is intended that the determination of financial need is to be made in parallel with the first batch of "regular" new gTLD applications. If the financial assistance awards are not made until the end of the first batch of new gTLD evaluations, fundraising can operate until November 2012.*

*Delaying also takes the recruitment of the financial assistance evaluation panel off of the critical path. In this new plan, the panel is not required until May 2012.*

*The \$138K fee reduction is meaningful in size and follows JAS and GAC recommendations. It is thought that providing a meaningful level of assistance to a fewer number of applicants is better than providing a small benefit to all those who qualify.*

*Assistance is limited to the available funding, thereby mitigating risk.*

*The criteria (demonstrating need and operating in the public benefit) follow JAS recommendations.*

*Completed new gTLD applications are due at the same time the financial assistance applications are due. This will help ensure only serious participants apply for financial assistance.*

*Those who do not meet the criteria threshold will be disqualified from the new gTLD process altogether and lose their \$47K fee. This will help ensure only bona fide*

*candidates for assistance will apply.*

*Note: This process does not follow all JAS recommendations. In particular, the JAS recommendations state that the \$2MM seed fund should not be used for fee reductions. The JAS intended the \$2MM and other funds raised be paid out to needy and worthy applicants to help build out registries.*

## 1.2. Batching

Resolved (2011.12.08.4a), the ICANN Board authorizes the President and CEO to develop a plan and propose to the community that a "secondary time stamp" be used for purposes of determining the processing order in the event that multiple batches of applications are to be processed under the New gTLD Program. A "secondary time stamp" would require applicants who are interested in participating in early batches to obtain a time-stamp through a designated process following the close of the application window.

Resolved, (2011.12.08.04b), there will be no preference given on the basis of whether an application is submitted in the beginning, middle or end of the application window.

Resolved (2011.12.08.05), the Board will not approve a system that would include random selection process for determining the development of batches.

Resolved (2011.12.08.06), the President and CEO is directed to add to the Applicant Guidebook that upon completion of the Board's approval of a final designation of the operational details of the "secondary timestamp" batching process, the final plan will be added as a process within the Applicant Guidebook.

### Rationale for Resolutions 2011.12.08.04 – 2011.12.08.06

*The best option from an operational and process management standpoint, random selection, is not available. It is likely to result in lawsuit based upon California law that makes operation of a lottery illegal in*

*most cases. Even if a random selection process were determined to not be a lottery by a court, those seeking to discredit, delay or halt the process would file a lawsuit.*

*The recommended option requires the development and implementation can be done outside of TAS and so not provide risk to the implementation of that complex system.*

*There is judgment required on the part of the applicant, i.e., when to submit the secondary registration in order to increase the likelihood of prioritization in an earlier batch.*

*One key to any mechanism is communications. Communications can be facilitated through TAS since applicants will have registered through the system.*

*Concerns that European and North American participants might have an edge through greater participation in numbers and a higher level of process sophistication are addressed by rotating the award of priorities through every region. There are arguments against this but it is thought that this approach better promotes diversity. In the end, no application is denied consideration.*

*Availability of an opt-out mechanism has been recommended several times in public comment. It will provide those entities that have elected to apply but not fully fleshed out business models time to consider the use of the TLD. Additionally, it will reduce the need and the importance of a batching mechanism.*

## 2. Consent Agenda

Resolved, the following resolutions in this Consent Agenda are approved:

### 2.1 Approval of Minutes of 22 October 2011 ICANN Board Meeting

Resolved (2011.12.08.07), the Board approves the minutes of the 22 October 2011 ICANN Board Meeting.

## 2.2 Approval of Minutes of 28 October 2011 ICANN Regular Board Meeting

Resolved (2011.12.08.08), the Board approves the minutes of the 28 October 2011 ICANN Regular Board Meeting.

## 2.3 Approval of Minutes of 28 October 2011 ICANN Organizational Board Meeting

Resolved (2011.12.08.09), the Board approves the minutes of the 28 October 2011 ICANN Organizational Board Meeting.

## 2.4 ccNSO Amendment to the Fast Track Implementation Plan

Whereas, the ICANN Board of Directors approved the Fast Track Implementation Plan at the ICANN meeting in Seoul, Republic of Korea on 30 October 2009

(<http://www.icann.org/en/minutes/resolutions-30oct09-en.htm#2>)

Whereas, at the ICANN meeting in San Francisco in March 2011, the ccNSO formed a sub-group within ccNSO PDP Working Group 1 to provide clarification for the DNS Stability Panel within the IDN ccTLD Fast Track for handling cases of confusing similarity.

Whereas, the ccNSO working group conducted a session on its recommendations during the ICANN meeting in Dakar, Senegal, in October 2011, and the ccNSO approved a resolution recommending that the ICANN Board approve an amendment to the Fast Track Implementation Plan in order to provide further guidance for a specific case of confusing similarity.

Whereas a proposed amendment to the Fast Track Implementation Plan was prepared to implement the ccNSO recommendation.

Resolved (2011.12.08.10), the ICANN Board of Directors approves the proposed amendment to the Fast Track Implementation Plan designed to implement the recommendation approved by the ccNSO at the ICANN meeting in Dakar, Senegal. The President and CEO is directed to

incorporate the amendment into the Fast Track Implementation Plan previously adopted by the ICANN Board on 30 October 2009 and implement the amendment as soon as practicable.

## Rationale for Resolution 2011.12.08.10

### ***Why is the Board addressing this issue now?***

*In December 2010, ICANN conducted the first review of the IDN ccTLD Fast Track Process. The review sought community input on a variety of topics including assessment of confusingly similar strings. This resulted in several public sessions and the formation of a sub-group within ccNSO PDP Working Group 1 to provide clarification for the DNS Stability Panel within the IDN ccTLD Fast Track for handling cases of confusing similarity. The working group conducted a session on its recommendations during the ICANN meeting in Dakar, Senegal, in October 2011, and the ccNSO approved a resolution recommending that the ICANN Board approve an amendment to the Fast Track Implementation Plan in order to provide further guidance for a specific case of confusing similarity.*

### ***What is the proposal being considered?***

*This modification to the Fast Track Implementation Plan is made to clarify the rules for the DNS Stability Panel in its evaluation of confusing similarity of requested IDN ccTLD strings. This change addresses specific situations when a requested IDN ccTLD string is confusingly similar to an existing ASCII ccTLD and the request is being made by the existing ccTLD operator with consent of the relevant public authority for the country or territory name requested.*

### ***Which stakeholders or others were consulted?***

*The string similarity topic was the focus of a public session held during ccNSO meetings during the ICANN meetings in San Francisco in March 2011. This meeting resulted in the ccNSO forming a sub-group created within IDN ccPDP Working Group 1 to work on providing more*

*guidelines to improve the predictability of confusingly similar strings.*

*The ccNSO sub-group reported its findings during another public ccNSO session during the Dakar meeting in October 2011*

***Are there fiscal impacts or ramifications on ICANN?***

*There are no anticipated fiscal impacts on ICANN from this decision. The amendment will clarify the rules for confusing similarity in the IDN ccTLD Fast Track, upholding ICANN's obligation to manage the introduction of new TLDs in a secure and stable manner, and is not expected to affect or impact the security or stability of the DNS.*

## 2.5 New Annex A/GNSO Policy Development Process

Whereas, in October 2008, the GNSO Council established a framework (see GNSO Council Improvement Implementation Plan; (<http://www.icann.org/en/topics/gnso-improvements/gnso-improvements-implementation-plan-16oct08.pdf> [PDF, 95 KB]) for implementing the various GNSO Improvements identified and approved by the ICANN Board of Directors on 26 June 2008 ([http://www.icann.org/en/minutes/resolutions-26jun08.htm#\\_Toc76113182](http://www.icann.org/en/minutes/resolutions-26jun08.htm#_Toc76113182)) (<http://www.icann.org/en/minutes/resolutions-26jun08.htm>);

Whereas, that framework included the formation, in January 2009, of two Steering Committees, the Operations Steering Committee (OSC) and the Policy Process Steering Committee (PPSC), to charter and coordinate the efforts of five community work teams in developing specific recommendations to implement the improvements;

Whereas, the PPSC established two work teams, including the Policy Development Process Work Team (PDP-WT), which was chartered to develop a new policy development process that incorporates a working group approach and makes it more effective and responsive to ICANN's policy development needs;

Whereas, the GNSO Council decided to terminate the PPSC on 28 April 2011 and instructed the PDP-WT to deliver its Final Report directly to the GNSO Council;

Whereas, the PDP-WT submitted its Final Report (<http://gnso.icann.org/issues/pdp-wt-final-report-final-31may11-en.pdf> [PDF, 1.39 MB]) on 1 June 2011 to the GNSO Council;

Whereas the GNSO Council opened a 30-day public comment period on the Final Report (see <http://www.icann.org/en/announcements/announcement-2-09jun11-en.htm>);

Whereas the GNSO Council referred those comments back to the PDP-WT for consideration (see <http://gnso.icann.org/resolutions/#201107>);

Whereas the PDP-WT reviewed those comments and updated the report as deemed appropriate (see <https://community.icann.org/download/attachments/9405500/PDP-WT+Public+Comment+Review+Tool+-+FINAL+-+21+September+2011.pdf?version=1&modificationDate=1317022410000> [PDF, 192 KB]);

Whereas the PDP-WT submitted its Updated Final Report (see <http://gnso.icann.org/improvements/updated-final-report-pdpwt-28sep11.pdf> [PDF, 1.51 MB]) to the GNSO Council on 27 September 2011.

Whereas, the GNSO Council adopted the Updated Final Report, including the proposed new Annex A and the PDP Manual unanimously.

Resolved (2011.12.08.11), the ICANN Board adopts the new Annex A as described in <http://www.icann.org/en/general/proposed-bylaws-revision-annex-a-clean-04nov11-en.pdf> [PDF, 80 KB]. The Bylaws as amended will take effect upon adoption. The transition to the new PDP will be conducted as recommended by the GNSO Council in its resolution (see <http://gnso.icann.org/resolutions/#201110>).

## Rationale for Resolution 2011.12.08.11

**Why is the Board addressing the issue now?**

On 26 June 2008 the ICANN Board [approved a set of recommendations](#) designed to improve the effectiveness of the GNSO, including its policy activities, structure, operations, and communications. The following pertains to the PDP:

*"Revising the PDP: The Policy Development Process (PDP) needs to be revised to make it more effective and responsive to ICANN's needs. It should be brought in-line with the time and effort actually required to develop policy and made consistent with ICANN's existing contracts (including, but not limited to, clarifying the appropriate scope of GNSO "consensus policy" development). While the procedure for developing "consensus policies" will need to continue to be established by the Bylaws as long as required by ICANN's contracts, the GNSO Council and Staff should propose new PDP rules for the Board's consideration and approval that contain more flexibility. The new rules should emphasize the importance of the preparation that must be done before launch of a working group or other activity, such as public discussion, fact-finding, and expert research in order to properly define the scope, objective, and schedule for a specific policy development goal and the development of metrics for measuring success. The revised PDP, after review and approval by the GNSO Council and ICANN Board, would replace the current PDP defined in Annex A of the ICANN bylaws". The GNSO Council has now submitted its proposal for this revised PDP.*

**What is the proposal being considered?**

*In furtherance of this effort, the GNSO Council unanimously recommended to the ICANN Board the adoption of a policy development process (PDP) as outlined in the [Updated PDP Final Report](#) [PDF, 1.51 MB]. The proposed Annex A to the ICANN Bylaws, and the PDP Manual proposed in the Updated PDP Final Report attempts to achieve the goals established by the ICANN Board when it approved the restructure of the GNSO Council. This revised PDP, after review and approval by ICANN Board, would replace the current PDP defined in*

*Annex A of the ICANN Bylaws. The main elements of the new PDP include, amongst others:*

- *Recommending the use of a standardized "Request for an Issue Report Template"*
- *The introduction of a "Preliminary Issues Report" which shall be published for public comment prior to the creation of a Final Issues Report to be acted upon by the GNSO Council*
- *A Requirement that each PDP Working Group operate under a Charter*
- *Dialogue between the GNSO Council and an Advisory Committee in the event that an the GNSO Council decides not to initiate a PDP following an Issues Report requested by such Advisory Committee*
- *Seeking the opinion of other ICANN Advisory Committees and Supporting Organizations, as appropriate that may have expertise, experience, or an interest in the PDP issue early on in the process*
- *Changing the existing Bylaws requiring a mandatory public comment period upon initiation of a PDP to optional at the discretion of the PDP Working Group*
- *Clarification of 'in scope of ICANN policy process or the GNSO'*
- *Changing the timeframes of public comment periods including (i) a required public comment period of no less than 30 days on a PDP Working Group's Initial Report and (ii) a minimum of 21 days for any non-required public comment periods the PDP WG might choose to initiate at its discretion*
- *Maintaining the existing requirement of PDP Working Groups producing both an Initial Report and Final Report, but giving PDP Working Groups the discretion to produce additional outputs*
- *A recommendation allowing for the termination of a PDP prior to delivery of the Final Report*

- *Guidance to the GNSO Council on the treatment of PDP WG recommendations*
- *New procedures on the delivery of recommendations to the Board including a requirement that all reports presented to the Board are reviewed by either the PDP Working Group or the GNSO Council and made publicly available*
- *The use of Implementation Review Teams*

#### **Which stakeholders or others were consulted?**

*Public comment forums were held on the [Initial Report](#), the [Proposed Final Report](#), the [Final Report](#) and the [proposed new Annex A](#), in addition to regular updates to the GNSO Council as well as workshops to inform and solicit the input from the ICANN Community at ICANN meetings (see for example, the ICANN Meeting in Brussels and San Francisco).*

#### **What concerns or issues were raised by the community?**

*In addition to workshops and regular updates to the GNSO Council, three public comment periods were held on the different versions of the report. Eight community submissions were received during the public comment forum on the Initial Report, seven contributions were received in relation to the Proposed Final Report and four contributions were received during the public comment forum on the Final Report. The PDP-WT reviewed all the comments received in great detail and documented how each of these comments were considered by the PDP-WT and how these comments resulted in changes to the report, if any (see Annex A, B and C of the [Updated PDP Final Report \[PDF, 1.51 MB\]](#)). As a result, all issues and concerns raised were addressed and responded to by the PDP-WT.*

*A summary and analysis of comments received during the public comment period prior to ICANN Board consideration of the revisions to Annex A can be found here: [To be completed following closing of public comment period on 5 December]. As of 23 November*

2011, no comments were received

**What significant materials did the Board review?**

The Board reviewed the Updated PDP Final Report, including the Annexes that detail how the PDP-WT has reviewed and addressed the comments received, the proposed Annex A, a redline showing the changes from the Current Annex A, as well as the summary of public comments and Staff's response to those comments.

**What factors the Board found to be significant?**

The recommendations were developed allowing for broad community input and participation. The Updated Final Report was adopted unanimously by the GNSO Council. The new PDP is expected to: maximize the ability for all interested stakeholders to participate in the GNSO's policy development processes; incorporate the Working Group model; ensure that the policy development process is based on thoroughly-researched, well-scoped objectives, and are run in a predictable manner that yields results that can be implemented effectively; and make it more effective and responsive to ICANN's policy development needs.

**Are there positive or negative community impacts?**

As outlined above, the ICANN Board expects positive effects of the new PDP, including maximizing the ability for all interested stakeholders to participate in the GNSO's policy development process.

**Are there fiscal impacts or ramifications on ICANN (strategic plan, operating plan, budget); the community; and/or the public?**

No fiscal impacts or ramifications on ICANN; the community; and/or the public are expected.

**Are there any security, stability or resiliency issues relating to the DNS?**

There are no security, stability, or resiliency issues related to the DNS if the Board approves the proposed

*recommendations.*

## 2.6 Changes to SSAC Membership

### 2.6.1 Thank You from Security and Stability Advisory Committee to John Schnizlein

Whereas, John Schnizlein was appointed to the ICANN Security and Stability Advisory Committee on 26 June 2009.

Whereas, ICANN wishes to acknowledge and thank John Schnizlein for his service to the community by his membership on the Security and Stability Advisory Committee.

#### Rationale for Resolution 2011.12.08.12

*It is the practice of the SSAC to seek Board recognition of the service of Committee members upon their departure.*

### 2.6.2 SSAC Appointments – Don Blumenthal and Rod Rasmussen

Whereas, the Security and Stability Advisory Committee (SSAC) does review its membership and make adjustments from time-to- time.

Whereas, the SSAC Membership Committee, on behalf of the SSAC, requests that the Board should appoint Rod Rasmussen and Don Blumenthal to the SSAC.

Resolved (2011.12.08.13) that the Board appoints Rod Rasmussen and Don Blumenthal to the SSAC.

#### Rationale for Resolution 2011.12.08.13

*The SSAC is a diverse group of individuals whose expertise in specific subject matters enables the SSAC to fulfill its charter and execute its mission. Since its inception, the SSAC has invited individuals with deep knowledge and experience in technical and security areas that are critical to the security and stability of the Internet's domain name system.*

*The SSAC's continued operation as a competent body is dependent on the accrual of talented subject matter experts who have consented to volunteer their time and energies to the execution of the SSAC mission. Don Blumenthal is a Senior Policy Advisor with the Public Interest Registry. He would bring to the SSAC wide experience from government and law enforcement. Rod Rasmussen is President and CTO of Internet Identity. He would bring to the SSAC extensive experience in cross-industry organizations, law enforcement collaboration, and Internet policy development.*

### 3. ATRT Recommendation 5: Board Compensation

Whereas, ICANN is considering whether to offer compensation to all of its voting directors for their services to ICANN.

Whereas, ICANN is a nonprofit California public benefit corporation that is exempt from Federal income tax under §501(a) of the Internal Revenue Code of 1986, as amended (the "Code") as an organization described in §501(c)(3) of the Code.

Whereas, ICANN may not pay directors more than Reasonable Compensation as determined under the standards set forth in §53.4958-4(b) of the regulations issued under §4958 of the Code (the "Regulations").

Whereas, ICANN has taken all steps necessary, and to the extent

possible, to establish a presumption of reasonableness in the level of voting Board member compensation, if approved.

Whereas, certain portions of ICANN's current Conflicts of Interest Policy must be revised in order for the Board to vote on whether to approve compensation for the voting Directors.

Whereas, certain portions of ICANN's current Bylaws must be revised in order to allow voting Board members other than the Chair to be compensated.

Whereas, the public comments received on the specific proposed revisions to the Conflicts of Interest Policy and Bylaws generally were in favor of the proposed revisions.

Whereas, the Board recognizes that many commenters suggested additional but unrelated revisions to the Conflicts of Interest Policy, which ICANN is committed to reviewing and revising as appropriate (see Board Resolution on Review of ICANN Conflicts of Interest Policy and Ethics at <http://www.icann.org/en/minutes/resolutions-28oct11-en.htm#6>).

Resolved (2011.12.08.14), the Board approves the limited changes to ICANN's Conflicts of Interest Policy needed to allow the Board to either approve or reject the Independent Valuation Expert recommendation on voting Board member compensation.

Resolved (2011.12.08.15), the Board approves the limited changes to ICANN's Bylaws needed to allow all voting Board members to receive compensation for services provided.

Resolved (2011.12.08.16), the Board approves the recommendation from the Independent Valuation Expert (as that term is defined in §53.4958-1(d)(4)(iii)(C) of the IRS Regulations), made in its Report or Reasoned Written Opinion, (as that term is defined in §53.4958-1(d)(4)(iii)(C) of the Regulations), that it is reasonable to "[i]ntroduce annual cash retainer of \$35,000 for outside directors and maintain the \$75,000 for Chairman of the Board" and "[a]n additional \$5,000 annual retainer would be provided for committee chair (except the Chairman of the Board)."

Resolved (2011.12.08.17), all Board members will be required to complete and sign a form either specifically accepting or declining the approved compensation, and a list of all will be posted on the Board of Directors page.

Resolved (2011.12.08.18), compensation for all voting Board members who choose to accept the compensation approved herein, shall be effective on 9 December 2011.

### Rationale for Resolutions 2011.12.08.14 – 2011.12.18

*Over the past several years, ICANN has been considering issues surrounding voting Board member compensation. The Board has publicly discussed the matter and has reviewed independent analysis and advice on the matter, as well as public comment. For example: (i) there were calls from the community in relation to ICANN Framework for Accountability and Transparency that voting Board members be compensated; (ii) budget contingency discussions since FY08 have involved the concept of possible Board compensation; (iii) outside counsel provided advice on the ramifications of Board compensation, including identification of assessments and safeguards ICANN would need to establish before proceeding; (iv) Watson Wyatt, and then Towers Watson, provided studies on other non-profit organizations and Board member compensation; (v) the Boston Consulting Group ("BCG") that conducted the Board Review suggested that relatively modest fees to compensate voting directors for service may be appropriate; (vi) the Board Review working group acknowledged general support from the BCG and the community for director compensation, but recommended further study in coordination with General Counsel; (vii) the Accountability and Transparency Review Team (ATRT) specifically recommended that the Board should implement a compensation scheme for voting Board members; and (viii) public comment and input was sought on required changes to ICANN's Conflicts of Interest Policy and Bylaws, as well as on the Independent Expert report on voting Board member compensation.*

*In August of 2010, the Board approved compensation for the Board Chair. (See <http://www.icann.org/en/minutes/resolutions-05aug10-en.htm#5>.) Since that time, a call for all voting Board members to be compensated has continued, most recently through Recommendation 5 from the ATRT. On 24 June 2011, the Board noted that the CEO and General Counsel had been directed to take the next steps to properly consider the ATRT's*

recommendation. (See <http://www.icann.org/en/minutes/resolutions-24jun11-en.htm#2>.)

ICANN followed a process calculated to pay an amount that is in its entirety Reasonable Compensation for such service under the standards set forth in §53.4958-4(b) of the Treasury Regulations.

First, the Board sought a recommendation from an Independent Valuation Expert ("Expert") as to the reasonableness of, and if so, the amount of compensation. The Board approved Towers Watson (TW) to be engaged to serve as the Expert. TW is a leading global professional services company with expertise in compensation for non-profit organizations. TW had provided advice on the Board Chair compensation and was recommended by the National Association of Corporate Directors to serve as the Expert. The Expert Report, which was posted for public feedback, can be found with the Announcement at <http://www.icann.org/en/announcements/announcement-3-04nov11-en.htm>.

Second, in the event that the Expert recommended compensation for voting Board members and the Board intended to vote on that recommendation, ICANN's Conflicts of Interest (COI) Policy had to be revised. Currently, the Policy states "[n]o Director shall vote on any matter in which he or she has a material Financial Interest that will be affected by the outcome of the vote." (See Article II, section 2.4(a) <http://www.icann.org/en/committees/coi/coi-policy-30jul09-en.htm>.) Thus, voting on Board compensation without any change would be a direct conflict of interest. Accordingly, the Board approved posting for public comment limited revisions to the COI Policy that will allow the Board to vote on director compensation. (See <http://www.icann.org/en/public-comment/bylaws-amend-vi-coi-policy-01sep11-en.htm>.)

Third, in the event that the Expert recommended a compensation arrangement for voting directors and the Board approves that recommendation, ICANN's Bylaws must be changed. Currently the Bylaws specifically prohibit compensation for voting directors. Article VI, section 22 states "All Directors other than the Board Chair shall receive no compensation for their services as Directors." See

<http://www.icann.org/en/general/bylaws.htm#VI>. The Board approved the posting for public comment proposed revisions to the Bylaws that would allow all voting Directors to be compensated. (See <http://www.icann.org/en/public-comment/bylaws-amend-vi-coi-policy-01sep11-en.htm>.)

The Board was provided a summary of all of the public comments with reference to each individual comment (see <http://www.icann.org/en/public-comment/bylaws-amend-vi-coi-policy-01sep11-en.htm>) on the specific proposed revisions and determined that all generally were in favor of the proposed revisions as they were necessary to allow for all voting Board members to be receive compensation, if approved. Further, no Feedback was received on the Expert Report.

The Board has thus taken all steps necessary to ensure that consideration of voting Board member compensation for services provided was done in accordance with all appropriate laws, rules and regulations, including that any compensation be, in its entirety, Reasonable Compensation under the standards set forth in §53.4958-4(b) of the Treasury Regulations.

In making its decision and passing these resolutions, the Board has reviewed all of relevant materials referenced above. In addition, throughout the time the Board has been considering the issue of voting Board member compensation, it has had the opportunity to review and consider: (i) the Boston Consulting Group's Independent Review Final Report, comment on that report, the Board Review Working Group's Final Report and comment on that final report (all of which can be found at <http://www.icann.org/en/reviews/board/>); and (ii) the ATRT Recommendations and related comments, all of which can be found through <http://www.icann.org/en/public-comment/public-comment-201012-en.htm#atrt-draft-proposed-recommendations> and <http://www.icann.org/en/announcements/announcement-31dec10-en.htm>.

Taking these steps positively impacts the accountability and transparency of ICANN as it fulfills a particular recommendation of the ATRT. Further, regularly informing the community through posting all of the process steps the Board is followed, as well as the proposed revisions for the Conflicts of Interest Policy and the Bylaws, and the Expert Report, significantly enhanced ICANN's transparency in this matter. Accordingly, this should have a

*positive community impact in its implementation.*

*Compensating voting Board members who choose to accept compensation at the amount recommended and approved will have a fiscal impact on ICANN. For this fiscal year, in anticipation of possible approval of voting Board member compensation, a portion of the budgeted contingency fee has been identified to cover whatever amount is needed to compensate voting Board members as approved pursuant to this resolution. As it is not yet not known precisely how many Board members will and will not accept compensation, the precise amount needed has not yet been calculated.*

*This decision will have no impact on the security, stability or resiliency of the domain name system.*

#### 4. Board Member Rules on Conflicts of Interest for New gTLDs

Whereas, ICANN is committed to attaining a higher ethical standard to ensure the legitimacy and sustainability of the multi-stakeholder model.

Whereas, ICANN's current corporate governance documents, as set out at <http://www.icann.org/en/documents/governance/>, include a Conflicts of Interest Policy and Board Code of Conduct (including ethical guidelines and confidentiality provisions).

Whereas, it is crucial to have strengthened rules and practices in place as ICANN embarks on the New gTLD Program.

Whereas, ICANN is undertaking multiple external reviews of its existing Conflicts of Interest Policy, Code of Conduct and other conflicts and ethics practices.

Whereas, while awaiting specific recommendations for enhancements to ICANN's policies and practices, ICANN is committed to demonstrating that it will treat decisions approving any new gTLD application in an ethical manner and with care to avoid even an appearance of a conflict of interest.

Resolved (2011.12.08.19), the Board adopts the following conflicts of interest rules as they specifically apply to the New gTLD Program:

Any and all Board members who are either knowingly or potentially advising on, or involved in any way with submitting, any new gTLD application:

- Will not vote on that application or any related application;
  - Will not participate in any deliberations about that application or any related application; and
  - Will not receive any information about that application or any related application until such information is made public.
- Any and all Board members who approve any new gTLD application shall not take a contracted or employment position with any company sponsoring or in any way involved with that new gTLD for 12 months after the Board made the decision on the application.
  - If deliberations call for expertise about the industry operations, or any other matters, that could be provided by a Board member excluded as a result of these rules, the Board member can be asked to participate in the limited discussion requiring such expertise. Independent experts could be similarly invited to participate in the deliberations. If such expertise is sought, the nature of the discussion and the expert will be identified in the meeting minutes or notes, as applicable.
  - In addition to all of the above, all existing conflicts of interest, ethics and conduct requirements continue to apply to all Board members, including the prohibition on using any confidential information obtained while serving on the Board for any other purpose whatsoever.

### Rationale for Resolution 2011.12.08.19

*Over the past several months, ICANN has placed a strong emphasis on the need for enhancing ICANN's policies relating to conflicts of interest, ethics, confidentiality and an overall code of conduct. During the Singapore meeting, the President and CEO identified such issues as crucial given that the New gTLD Program was entering into a new phase with Board approval, which was taken on 20 June 2011. In addition, the community has been calling for a thorough review of these policies. Accordingly, ICANN has determined that it should strive to*

*achieve a Gold Standard in both the documentation of policies and the adherence to policies relating to conflicts of interest ethics, confidentiality and code of conduct.*

*In order to achieve the Gold Standard that ICANN has determined to achieve, ICANN is undertaking multiple external reviews of its conflicts and ethics practices. First, our corporate law firm is reviewing our current working documents, including our "Conflicts of Interest Policies", "Code of Conduct" and "Employee Handbooks," to enhance the focus on best practices for conflicts and ethics. Second, a new independent law firm (not involved in ICANN processes) is reviewing ICANN's documentation, comparing ICANN to similarly situated non-profits and making recommendations for enhancements. Third, ICANN is contracting with an international expert group to review ICANN's documents and practices and to make recommendations. This group will focus on ICANN's global function and the best practices of other international organizations.*

*While awaiting specific recommendations for enhancements to ICANN's policies and practices, ICANN is committed to demonstrating that it will treat decisions relating to approving any new gTLD application in an ethical manner and with care, to avoid even the appearance of a conflict of interest. Accordingly, ICANN has passed this resolution to help direct the Board members' conduct. Again, it should be noted that this is not meant to supplant or supersede any existing or soon to be additional policies and practices relating to conflicts of interest, conduct or ethical behavior.*

*Taking this action will positively impact the ICANN community by addressing these issues with urgency, and committing to the highest ethical standards, particularly with respect to the New gTLD Program. Such enhancements are meant to ensure the legitimacy and sustainability of the multi-stakeholder model as enshrined in ICANN. Further, this resolution will should not have any fiscal impact on ICANN or the community. This action will not have any impact on the security, stability and resiliency of the domain name system.*



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